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A DIGEST OF STATE AIR POLLUTION LAWS

Public Health Service
Washington, D. C.

1959

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a digest of

STATE AIR POLLUTION LAWS

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U S DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Public Health Service

a digest of

State Air Pollution Laws

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U. S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Public Health Service
Bureau of State Services, Division of Engineering Services
Air Pollution Engineering Program
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FOREWORD

The Digest of State laws relating to air pollution was prepared with the assistance of the Public Health Division, Office of the General Counsel, Department of Health, Education, and Welfare, from an examination of pertinent State statutes.

It is anticipated that the Digest will be revised and supplemented from time to time to enhance its usefulness and to keep it current with new legislation.

It is hoped the Digest will be of assistance in the consideration and evaluation of State air pollution control legislation, both existing and proposed.

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DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Alabama

"§ 75. The following things, conditions and acts, among others are declared to be public nuisance per se, menacing public health and unlawful: * * *

"(5) Such . . . acts, things or conditions as may from time to time be by the rules and regulations of the State board of health declared to be public nuisances per se menacing public health.

"(6) The ownership, possession, management, control, maintenance, permitting or use of any of the things or conditions described or referred to . . . in any rule or regulation adopted under subdivision 5 of this section.

"(7) The conducting of a business, trade, industry, or occupation, or the doing of a thing, not inherently insanitary or a menace to public health in such a manner as to make it a menace or likely to become a menace to public health.

"§ 76. Any such nuisance shall be abated by the county board of health . . ."

1/ Citation in this digest refers to Code of Alabama, 1940, Title 22, Health Laws and Regulations.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Alaska

Chapter 9 of Title 40 [Health and Safety] is entitled "Pollution of Waters or Air." Sections 2 and 3 thereof declare it to be a public nuisance punishable as a misdemeanor with a fine of not less than $10 nor more than $50 or imprisonment from 5 to 25 days or both for failure to abate any nuisance . . . . which would be obnoxious to the public or cause the spread of disease.

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[1] Alaska Compiled Laws Annotated - 1949 edition.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Arizona

Section 9-276 provides:

"In addition to the powers already vested in cities by their respective charters and by general law, cities and their governing bodies may:

* * *

"16. Define nuisances and abate them, and impose fines upon persons creating or continuing nuisances."

Section 13-601 provides:

"Anything which is injurious to health or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by a considerable number of persons . . . is a public nuisance, and is no less a nuisance because the extent of the annoyance or damage inflicted is unequal."

Section 13-602 provides:

"A. A person who maintains or commits a public nuisance, the acts and punishment for which are not otherwise prescribed, is guilty of a misdemeanor.

"B. A person who wilfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor."

Under §36-182, providing in pertinent part that county boards of health shall have such powers within their respective counties and outside the corporate limits of cities having a city board of health as are granted the State board of health and the State department of health subject to supervisory control by the State board, such boards of health may abate nuisances.

Section 36-187 provides:

"A. Each city or county board of health shall within its jurisdiction examine into all nuisances . . . and causes of sickness and make regulations necessary for the public health and safety of the inhabitants.

"B. . . . [Notice by publication of regulations.]

"C. A person violating a published order or regulation of a board of health is guilty of a misdemeanor punishable by a fine of not more than one hundred dollars, imprisonment for not more than thirty days, or both."

1/ Citations in this digest refer to Arizona Revised Statutes Annotated, 1956 edition and Supplement.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Arkansas

The Governor may require the State Board of Health to examine into nuisances affecting the health in any locality. Conditions certified by the State Board of Health to be a nuisance may be declared by the Governor to be public nuisances and he may order them to be changed, abated or removed. Any violation of such an order is punishable as a misdemeanor.

Any board of health of any city may appoint one of its officers as representative during the examination by the State Board of Health of an alleged nuisance and may take part in the deliberations but may not vote [§§ 82-112 and 82-113].

1/ Citation in this digest refers to Arkansas Statutes - 1947 edition Annotated.

DIGEST OF AIR POLLUTION CONTROL LAWS 1/

California

1. State Department of Public Health

Article 9, Chapter 2, Part 1, Division of the Health and Safety Code 1/ gives the State Department of Public Health certain duties with respect to air pollution. They include research, establishment of standards, monitoring air pollution, and assistance to local agencies.

A. Research

The Department is required to:

1. Conduct studies to determine health effects of air pollution.

2. Determine physiological effects of air pollution on plant and animal life.

3. Determine factors responsible for air pollution.

4. Monitor the concentration of pollutants in the air.

5. Develop administrative procedures for control of air pollution in emergencies.

6. Assist local agencies in air pollution activities.

The Department of Public Health may enter into agreements with any public or private organization, agencies or individual as may be deemed necessary to carry out its functions.

B. The State Department of Public Health is directed, prior to February 1, 1960, to:

1. Develop and publish standards of quality for the air of the State. The standard shall "reflect the relationship between the intensity and composition of air pollution and the health, illness, including irritation to the senses, and death of human beings, as well as damage to vegetation and interference with visibility"(§ 426.1, Health and Safety Code, added by Chapter 835, Laws of 1959).

2. Determine the maximum allowable standards of emission of exhaust contaminants from motor vehicles "compatible with the preservation of the public health including the prevention of irritation to the senses" (§ 426.5, Health and Safety Code, added by Chapter 200, Laws of 1959).

Both standards shall be developed after holding hearings with public notice and opportunity for interested persons to be heard.

1/ Deering's California Code or West's Annotated California Codes.

See footnote on page 6.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

California

2. Air Pollution Control Districts

I. General Statement

The Air Pollution Control District Act, enacted in 1947, establishes statewide standards for air pollution control with enforcement on a county basis at local option.

Air contaminant is defined to include "smoke, charred paper, dust, soot, grime, carbon, noxious acids, fumes, gases, odors, or particulate matter, or any combination thereof" (§ 24200). The statute prohibits the discharge of contaminants:

(1) for periods in excess of 3 minutes in any one hour which is as dark or darker than Ringelmann No. 2 or has the same or greater opacity as Ringelmann No. 2 (§ 24242).

(2) which may cause injury or annoyance to the public, or endanger the comfort, health or safety of a person or cause or tend to cause injury to business or property (§ 24243).

The statute creates in each county an air pollution control district (§ 24200), except that in a unified district each county is a zone of that district (§ 24331).

II. Administrative Organization

A. Establishment of county air pollution control districts.

An air pollution control district is established in each county (§ 24200) with boundaries coextensive with the county (§ 24201) or, in districts formed by two or more contiguous counties, with boundaries the same as those of the several counties of which it is comprised (§ 24330 and 24332).

B. Authorization of districts to function.

Air pollution control districts are authorized to function only after a resolution by the appropriate county board of supervisors declaring that there is need for an air pollution control district to function in the county (§ 24202) or after ratification by the boards of supervisors of two or more counties of the agreement of their representatives to form a unified district (§ 24331).

The resolution is authorized only if, from evidence received at a public hearing (§ 24203) as to which required public notice has been given (§ 24204), it is found that there is need for a district to function because:

1. The air within the county is so polluted with air contaminants as to be injurious to health, or an obstruction to the free use of property, or offensive to the senses of a considerable number of persons, so as to interfere with comfortable enjoyment of life or property.

1/ The citations in this digest refer to chapters and sections in Deering's California Code Annotated, 1952 edition, Health and Safety Code, Vol. 2, pocket supplement. West's California Code Annotated (1955 edition) contains parallel citations.

2. It is not practical to rely upon the enactment or enforcement of local county and city ordinances to prevent or control the emission of smoke, fumes or other substances which cause or contribute to such pollution (§ 24205).

C. Powers.

Upon adoption of the resolution the district has the following powers:

1. To have perpetual succession.

2. To sue and be sued.

3. To adopt a seal and alter it.

4. To take by grant, purchase, gift, devise or lease, hold, use, enjoy, and to lease or dispose of real or personal property of every kind within or without the district necessary to the full exercise of its powers.

5. To lease, sell or dispose of any property when such property is no longer required for the purposes of the district or may be leased for any purpose without interfering with the use of the same for the purposes of the district and to pay any compensation received therefor into the general fund of the district (§ 24212).

D. Air Pollution Control Board.

1. Organization and composition

The board of supervisors of a county are, ex officio, the air pollution control board of the air pollution control district in such county (§ 24220) and the boards of supervisors of the zones comprising a unified district are, ex officio, the air pollution control board of the district (§ 24335).

2. Duties and powers

a. The air pollution control board may make, enforce and perform all other acts necessary or proper to accomplish the purposes of the Act for the administration of the district (§ 24260). It may take steps to reduce the amount of air contaminants released in the district if it finds that the air is so polluted as to cause any discomfort or property damage at intervals to a substantial number of persons in the district (§ 24262).

b. Such orders, rules and regulations may be made only after a public hearing of which the required public notice has been given (§ 24261).

c. The board may require by regulation that before any person builds, erects, alters, replaces, operates, sells, rents, or uses any article, machine, equipment or other contrivance specified by such regulation the use of which may cause the issuance of air contaminants, such person must obtain a permit to do so from the air pollution control officer (§ 24263) but is to be allowed a reasonable time within which to apply for a permit and to furnish the air pollution control officer required

information. The board may by regulation establish standards of performance for any equipment or method specifically designed or intended for use upon any motor vehicle as defined in the Vehicle Code to control the issuance of air contaminants and may prohibit the sale of such equipment until the air pollution control officer has approved it and issued a permit authorizing its sale (§ 24263.7). However, no permit is needed for any vehicle as defined in the Vehicle Code (S B 503 -- 1957). Statutory exemptions to such requirements are (1) mobile equipment, (2) dwellings for not more than four families, (3) an incinerator or barbecue equipment used exclusively in connection with such a dwelling, (4) repairs or maintenance not involving structural changes to any equipment for which a permit has been granted (5) use of equipment in agricultural operations in the growing of crops or raising of fowls or animals, (6) use of an orchard or citrus grove heater which does not produce unconsumed solid carbonaceous matter at a rate in excess of one gram per minute except that the air pollution control board of any county, any part of which lies south of the Sixth Standard Parallel South, Mount Diablo Base and Meridian may at its discretion require operators of grove heaters to obtain permits. In no event may such operator be denied a permit if such heaters produce unconsumed solid carbonaceous matter at the rate of one gram per minute, or less (§ 24265).

d. The air pollution control board may contract with the county or any city within the district and the county and any such city may contract with the air pollution control district for assistance in regulation of installations which may issue air contaminants (§ 24266).

e. The air pollution control board appoints an air pollution control officer (§ 24222) and may provide for him to employ assistance (§ 24223). His duties are to enforce the provisions of the statute, orders, regulations and rules of the air pollution control board, all variances and standards prescribed by the hearing board (§ 24224) and all provisions of the Vehicle Code regarding control of air contaminants. In counties having a civil service system the air pollution control officer and all of his assistants are to be appointed pursuant to civil service provisions (§ 24228). In the enforcement pursuant to (§ 24224) the air pollution control officer is a peace officer (§ 24231). He may enter buildings to enforce pertinent provisions of the Vehicle Code as well as this Act (§ 24246). He is immune from criminal prosecution for acts done in the performance of official duty (§ 24254).

f. The air pollution control board appoints a three-member hearing board. No member may be otherwise employed by the air pollution control district or by the county. Two must have been admitted to practice law in California and one must be a chemical or mechanical engineer (§ 24225). The members serve staggered terms of three years each after the termination of the original term (§ 24226).

E. Financing

1. The board of supervisors of a county in which an air pollution control district has been activated may appropriate funds to such district to be deposited in the treasury of the district (§ 24209) and the board of supervisors of each zone in a unified district is to appropriate necessary funds as determined by the air pollution control board (§ 24337) to be deposited into the district treasury (§ 24339).

2. Fees

a. The air pollution control board may provide a schedule of fees for the cost of issuing permits and inspection (§ 24267). The fees may be paid to a city or officer or agency thereof when a contract for assistance has been made or into the district treasury (§ 24268).

b. The air pollution control board may provide a schedule of fees for the cost of handling variance orders (§ 24293). Such fees are to be paid into the district treasury (§ 24294).

III. Prohibited Emission: Operations Exempted

A. Prohibited emissions (Article 3)

1. A person shall not discharge into the atmosphere from any single source of emission any air contaminant for a period or periods aggregating more than three minutes in any one hour which is

(a) as dark or darker in shade than Ringelmann No. 2, or

(b) of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke as dark as Ringelman No. 2 (§ 24242).

2. A person shall not discharge from any source such quantities of air contaminants or other material which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public or which endanger the comfort, repose, health or safety of any such persons or the public or which cause or tend to cause injury or damage to business or property (§ 24243).

B. Exemptions

1. Exempted from the prohibitions are smoke from necessary fires set by or permitted by any public officer in the performance of his official duty to abate weeds, to prevent a fire hazard, or to instruct public employees in the methods of fire fighting (§ 24245).

2. The prohibitions of (§ 24242) do not apply to

a. Agricultural operations in the growing of crops or raising of fowls or animals;

b. The use of an orchard or citrus grove heater which does not produce unconsumed solid carbonaceous matter at a rate in excess of one gram per minute; or

c. The use of other equipment in agricultural operations in the growing of crops, or raising of fowls or animals (§ 24251).

IV. Procedures

A. Composition and organization of hearing board

1. The hearing board of an air pollution control district consists of three members appointed by an air pollution control board (§ 24225). The hearing board selects a chairman from its members (§ 24311).

2. The board may hold a hearing in bank or may designate two or more of their number to hold a hearing (§ 24312).

3. If two or three members conduct a hearing the concurrence of two is necessary for a decision (§ 24313).

4. The chairman of the board may issue subpoenas requiring a witness to appear to testify and to produce books, papers and documents (§ 24315).

5. The board may administer oaths (§ 24320) and require witnesses to be sworn (§ 24321).

B. Permits - Suspension and revocation of permits

1. An air pollution control officer may suspend a permit if the permittee does not furnish him with requested information and must serve on the permittee notice in writing of and the reasons for such suspension (§ 24270). When the information is furnished the permit is to be reinstated (§ 24272). The air pollution control officer may reinstate the permit when "good reasons" exist (§ 24273).

2. Within 10 days after receipt of notice of suspension a permittee may file with the hearing board a demand for a public hearing (§ 24271).

3. An air pollution control officer may request a public hearing regarding reinstatement of a permit which has been revoked or suspended (§ 24274).

4. Within 30 days after a request for a public hearing the hearing board must give not less than 10 days notice of the time and place of such hearing to the permittee, to the air pollution control officer and to such other persons as the board deems should be notified (§ 24275).

5. After a public hearing, the hearing board may

a. Continue the suspension of a permit,

b. Find that no violation exists and reinstate an existing permit,

c. Remove the suspension pending furnishing by the permittee of the information required,

d. or revoke an existing permit if it finds

(1) the permittee has failed to correct any conditions required by the air pollution control officer

(2) a refusal of a permit would be justified

(3) fraud or deceit was employed in the obtaining of the permit, or

(4) any violation of the air pollution control statute or of any rule or regulation of the air pollution control board (§ 24276).

C. Variances

1. The hearing board may permit variances (§§ 24291, 24292, 24296). At least 10 days' notice of the time and place of a hearing to grant a variance must be given to the air pollution control officer and to the applicant (§ 24295).

2. The hearing board in making any order permitting a variance may specify a time not to exceed one year during which the order will be effective. It may be continued from year to year on the approval of the air pollution control officer (§ 24301).

3. The hearing board may revoke or modify by written order after a public hearing held upon not less than 10 days' notice, any order permitting a variance (§ 24298).

4. A variance granted under a local ordinance prior to activation of an air pollution control district is to be continued for the time specified therein or for one year, whichever is shorter or until the hearing board revokes or modifies such variance (§ 24303).

D. Appeals

A trial de novo and an independent determination of the reasonableness and legality of an action of the hearing board may be had in the superior court by a person, including the air pollution control district, aggrieved by such action (§§ 24322 and 24323).

V. Violations and Penalties

A. Injunction

Violation of Article 3 of the statute (§ 24242, 24243) regarding prohibited contamination or of any order, rule or regulation of the air pollution control board may be enjoined. (§ 24252).

B. The following are punishable as misdemeanors:

1. A violation of Article 3 or any order, rule or regulation of an air pollution control district. Each day during any portion of which such violation occurs constitutes a separate offense (§§ 24253 and 24281).

2. Knowingly making any false statements in any application for a permit to use a contrivance causing issuance of air contaminants or in any information, analyses, plans or specifications submitted in conjunction therewith or at the request of the air pollution control officer (§ 24277).

3. The building, erecting, altering, replacing, using or operating any source capable of emitting air contaminants for which a permit is required when the permit to do so has been suspended or revoked (§ 24278), or when no permit has first been obtained (§ 24279), or contrary to the provisions of any permits issued under regulations adopted pursuant to Article 3 (§ 24280).

4. Wilful failure or neglect of a permittee to furnish information, analyses, plans or specifications required by the air pollution control officer (§ 24282).

5. Obstructing an air pollution control officer in his entrance of a building (except a building designed for and used exclusively as a private residence) or in detaining and inspecting any vehicle designed and used on a public highway but which does not run on rails (§ 24246).

C. Contempt

Failure to obey a subpoena of the hearing board is punishable as contempt. The judge of the superior court of the county, upon receipt of a report of the contempt from the board, is required to issue an attachment of the body. The same penalties may be imposed and the same punishment inflicted on the violator, as in the case of a witness subpoenaed to appear and give evidence on the trial of a civil cause before a superior court (§§ 24317, 24318, 24319, and 24341).

VI. Scope and Construction

The Legislature does not intend to occupy the field of air pollution legislation by this Act and does not prohibit any local ordinance stricter than the provisions of the statute or rules and regulations adopted thereunder, nor do they supersede any local county or city ordinance. This prosecution or punishment of a violation of a local ordinance committed when the ordinance was in full force and effect is not barred if it should be held that these provisions of the statute supersede the local ordinance (§§ 24247-24249).

"VII. Miscellaneous

The Revenue and Taxation Code provides that individual taxpayers (§ 17226) and banks and corporations (§ 24372) may deduct from their income for tax purposes the cost of equipment installed at the source of atmospheric pollutants or contaminants for the purpose of eliminating and reducing such contaminants. The cost shall be amortized over a 60-month period. The cost must have been incurred after December 31, 1954."

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

California

3. Bay Area - San Francisco

I. General Statement

The Bay Area Air Pollution Control District Act was enacted in 1955 to provide a special district to control and suppress air pollution in the San Francisco Bay area because of the special problem created there by the permanent temperature inversion layer.

The statute creates a district composed of nine counties which is a body corporate and politic and a public agency of the State (§ 24350).

The definition of "air contaminant" is the same as that given in the Air Pollution Control District Act with the addition of "mist" as a contaminant (§ 24348.3). (For prohibited emissions see Item III infra, sec. 24360).

II. Administrative Organization

A. Activation of the district

1. The district may transact business and exercise its powers on the effective date of this law in the Counties of Alameda, Contra Costa, Marin, San Francisco, San Mateo and Santa Clara (§ 24350.2).

2. In the Counties of Napa, Solano, and Sonoma the district may not transact business nor exercise its powers until the board of supervisors of a county, after giving prescribed notice, on its own motion or on petition of electors, holds a public hearing to determine if there is need for the district to function in the county (§§ 24350.3, 24350.4 and 24350.5).

3. From and after the date of the filing of a certified copy with the board of the resolution by the board of supervisors, declaring the need for the Bay Area Air Pollution Control District to function, the district begins to function and may exercise its powers within the county (§ 24350.8).

B. Board of Directors of Bay Area Air Pollution Control District.

1. Composition and organization

a. The board is the governing body of the district and exercises all the powers of the district except as otherwise provided (§ 24352.3).

b. The board of supervisors of each county in which the district is activated appoints one of its members to be a member of the board. The city selection committee of each such county (composed of mayors or presiding officers of cities) appoints a member of the board, such member to be selected from among the mayors and city councilmen of the cities within such county (§ 24352).

1/ Citations in this digest refer to Chapters and sections in Deerings's California Codes Annotated, Health and Safety Code, Vol. 2, 1955 Supplement and California New Laws, 1957, which amended sections 24354.9, 24367.13, and 24360.

c. Each member appointed by the board of supervisors holds office for four years and each member appointed by the city selection committee holds office for two years (§ 24352.1).

d. Members of the board may be removed at any time by the appointing authorities (§§ 24352.1 and 24352.2).

e. A majority of the members of the board constitutes a quorum for the transaction of business (§ 24352.4).

f. The board is to establish and maintain offices wherever it deems will best facilitate the accomplishment of district objectives (§ 24354.3)

g. The board decides when and where to meet (§ 24354.4).

h. The board appoints its chairman and other officers from its members (§ 24354.5).

2. Powers and duties

a. General authority

The district has the power

(1) to have perpetual succession

(2) to sue and be sued

(3) to adopt a seal and alter it

(4) to take by grant, purchase, gift, devise, or lease, hold, use, enjoy and to lease or dispose of real or personal property of every kind necessary to the full exercise of its powers.

(5) to lease, sell or dispose of any property or interest therein when it is no longer required for the purposes of the district, or may be leased without interfering with its use for the purposes of the district, and to pay any compensation received therefor into the general fund of the district (§ 24354).

b. The board may appoint an executive secretary (§ 24352.6).

c. The board may cooperate and contract with any federal, state or local governmental agencies, private industries, or civic groups necessary or proper to the accomplishment of the purposes of the district (§ 24352.7).

d. The board appoints an air pollution control officer (§ 24355).

(1) the air pollution control officer enforces the provisions of the statute, orders, regulations, and rules prescribed by the board, and variances and standards prescribed by the hearing board (§ 24355.2).

(2) the air pollution control officer, subject to statutory limitations, appoints his personnel (§ 24355.1)

(3) he may require certain information and analyses from persons subject to regulations of the board (§ 24362.4).

e. The board may contract for the conducting of competitive examinations for applicants for employment and for the performance of any other service connected with the administration of the district (§ 24354.8).

f. The board may by ordinance adopt a civil service system for employees of the district except the executive secretary and air pollution control officer are exempt from such system and serve at the pleasure of the board (§ 24354.9).

g. The Board of Directors appoints a Bay Area Air Pollution Control District Advisory Council which consists of twenty members, ten of whom must represent specified groups of the community (§ 24356).

h. The board appoints a three-member hearing board, one member to be a lawyer and one a chemical or mechanical engineer (§ 24357).

i. After adoption of a resolution made upon proper notice and hearing the board may adopt and enforce rules and regulations to control the release of air contaminants (§§ 24362 and 24362.1). When the board finds that the air in the district is so polluted as to cause discomfort or property damage to a substantial number of the inhabitants of the district it may make and enforce such general orders, rules, and regulations as will reduce the amount of air contaminants released; but no such order shall specify the design of equipment, type of construction or particular method to be used in reducing the release of air contaminants (§ 24362.3).

C. The air pollution control district may be dissolved according to statutory procedures (§ 24372).

III. Prohibited emissions

A. Discharge from any source of such quantities of air contaminants or other material which cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public or which endanger the comfort, repose, health or safety of any such persons or the public or which cause or have a natural tendency to cause injury or damage to business or property is prohibited (§ 24360).

B. This section does not apply to the following:

1. Smoke from fires set by public officers, as a part of their public duties, for the purpose of weed abatement, prevention of fire hazard, or necessary instruction of public employees in methods of fire fighting (§ 24360.1).

2. Smoke from fires set, or permitted, by the agricultural commission of any county as a part of agricultural operation for growing crops or raising fowls or animals, if set or permitted in the course of his official duty; nor to smoke from fires set or permitted by the State Forester or his agent for watershed, range or pasture improvement, if the fire is set or permission given in the performance of their official duties. In neither case may the fire set nor permission given violate rules or regulations laid down pursuant to sec. 24362.3. (See II. B. 2i, supra) (24360.2 as amended by Chapter 1329, Laws of 1959).

3. Odors resulting from agricultural operations in growing crops or raising fowls or animals (§ 24360.8).

C. This Act does not occupy the field, and the enactment and enforcement of county or city ordinances stricter than, or identical to, the rules and regulations adopted pursuant to this Act is expressly permitted (§ 24360.3 - § 24360.5, Section 1, Chapter 698, Laws of 1959). See item VII infra for variances.

IV. Procedures

A. Hearing Board

1. Composition and organization

a. The hearing board, appointed by the air pollution control district board, consists of three members (§ 24357).

b. The hearing board shall select its chairman from its members (§ 24367.1).

c. A hearing may be held in bank, or by one or two of the members (§ 24367.2).

d. The concurrence of two is necessary to a decision if two or three members conduct a hearing (§ 24367.3).

2. Powers

a. The hearing board may issue subpoenas (§ 24367.5).

b. Members of the hearing board may administer oaths (§ 24367.10).

c. The hearing board may permit variances (§ 24365).

V. Violations and Penalties

A. Failure to obey a subpoena

1. Failure to appear before a hearing board to give evidence or to produce books and papers in response to a subpoena is contempt and is to be reported by the hearing board to the judge of the superior court of the county in which the person resides (§ 24367.7).

2. Upon receipt of the report, the judge of the superior court issues an attachment and has jurisdiction of the matter upon production of the body of the defendant (§§ 24367.8 and 24367.9).

3. The same punishment and penalties attach to such defendant as in the case of a witness subpoenaed in the trial of a civil cause before a superior court (§ 24367.9).

B. Failure to obey rules, orders, or regulations of the air pollution control district board.

1. The Control Officer may file an accusation with the District Hearing Board that any person has violated rules and regulations of the District Board of Directors. If, after Hearing, the Hearing Board finds that there have been violations, and that no variance is justified it shall certify the case to the District Attorney.

2. "The District Attorney shall petition the Superior Court for an injunction restraining such person from any activity causing or threatening pollution. The court shall issue an order requiring such person to show cause why the injunction should not be issued. (§ 24367.11, 1959 Amendment, Chapter 698)"

3. "Further proceedings shall be conducted in the same manner as any other action for an injunction except that the court shall receive in evidence a transcript of the proceedings before the Hearing Board and such other evidence as the court, in its discretion, deems proper. (§ 24367.11, 1959 Amendment, Chapter 698)"

4. "The District Attorney may associate with him in the prosecution of such case the counsel for the Board. (§ 24367.11, 1959 Amendment, Chapter 698)"

C. Grievances against Hearing Board

1. Any person, including the district, deeming himself aggrieved may maintain a special proceeding in a superior court within the district to determine the reasonableness and legality of any action of the hearing board (§ 24367.12).

2. "In such a special proceeding after any decision of the hearing board the court is authorized to exercise its independent judgment on the evidence and to make an independent determination of the reasonableness and legality of such action in such court on all issues of law, facts and mixed questions of law and facts and opinions therein involved." (§ 24367.13)

VI. Finances

A. Taxation

Each board of supervisors is required to levy for the benefit of the district an ad valorem tax on the taxable property, but not on intangible personal property, within the county, which tax is a lien upon the property. Collection may be enforced as are liens for county taxes (§ 24370.2 and 24370.3).

B. Loans

1. The district may borrow money for the current or ensuing year in amounts not to exceed the total amount of the estimate of the tax for the current or ensuing year (§ 24370). The amount of money required by a district in a year may not exceed one cent on each one hundred dollars (§ 24370.1).

C. Fees

The Board of Directors of the District may provide a schedule of fees for the filing of applications for variances, etc. (§ 24365.2, 24365.3).

VII. Variances

A. The hearing board may on its own motion or at the request of any person hold a hearing after required notice to determine under what conditions and to what extent a variance from the requirements established by Article 10 or by rules, regulations, or orders of the board is necessary and will be permitted (§§ 24365.1 and 24365.4).

B. Variances may be permitted if compliance with Article 10 or with any rule, regulation, or order of the air pollution control board will result in an arbitrary and unreasonable taking of property or in the practical closing and elimination of any lawful business, occupation or activity without sufficient corresponding benefit to the people in the reduction of air contamination, but no variance may permit the maintenance of a nuisance (§ 24365.5).

C. Variances may be revoked or modified by written order after a public hearing held upon not less than ten days' notice (§ 24365.7).

D. The hearing board is to specify the time during which a variance order is to be effective, in no event to exceed one year, but such variance may be continued from year to year on the approval of the control officer (§ 24365.10).

E. Prior local variances may be continued for the time therein specified but no longer than one year unless prior to the time of expiration the hearing board revokes or modifies such variance (§ 24365.11).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

California

4. San Joaquin Valley Air Control District

I. General Statement

A. In 1959 California created the San Joaquin Valley Air Pollution Control District which does not become operative until approved at the November 1960 election (see Item IC below). The act included a declaration of policy to the effect that the people of the State have a primary interest in the purity of atmosphere and that in certain portions of the State there is air pollution which is detrimental to the public peace, health, safety, and welfare of the people of the State. (Sec. 24375.01). The act further found that the air in certain portions of the State was polluted with air contaminants as defined in the act, that the situation was beyond the power of the local county and city ordinances, and required the establishment of air pollution control districts in those areas to reduce such contamination in order to safeguard life, health, property and the public welfare, and make possible the comfortable enjoyment of life and property (§ 24375.02). It declared the problems of air pollution to be primarily regional and dependent upon factors of weather, topography, population, transportation, methods of waste disposal, and agricultural and industrial development, and that the San Joaquin Valley presented special problems distinct from those presented in the rest of the State, requiring a special law, to establish an air pollution district for the Valley area (§ 24375.03).

Air contaminant is defined as including "smoke, charred paper, dust, soot, grime, carbon, noxious acids, fumes, gases, mist, odors, or particulate matter, or any combination thereof." (§ 24375.01). This is the same definition as that given in the Bay Area Pollution Control District Act.

B. Prohibited Acts

1. The act forbids the discharge from any source whatsoever within the district of such quantities of air contaminants, or other material, which causes detriment, nuisance or annoyance to a considerable number of persons or other business or which endangers the comfort, repose, health or safety of any such persons or other business or which causes or has a natural tendency to cause damage to business or property (§ 24375.55). Violations may be enjoined by civil action brought in the name of the people of California (§ 24375.64).

2. Excepted from these prohibitions are:

(a) Smoke from fires set or permitted by a public officer in the performance of his duty for the purpose of weed abatement, prevention of a fire hazard or necessary instruction in the methods of fire fighting (§ 24375.56).

1/ The "San Joaquin Valley Air Pollution Control Law," Chapter 1915, Laws of 1959, was approved July 15, 1959, and added Chapter 2.6 to Division 20 of the Health and Safety Code starting at Section 24375. References are to sections of the Health and Safety Code or to sections of the Act.

(b) Smoke from fires set or permitted by the agricultural commissioner of any county within the district for agricultural operations in growing crops or raising stock if pursuant to the official duty of the commissioner. No fire shall be set or permits g ven in violation of the rules adopted by the Board of Directors of the district (§ 24375.57).

(c) Smoke from fires set or permitted by the State forester or his agent in the performance of official duty, for the purpose of watershed, range or pasture improvement, provided that regulations adopted by the Board are complied with (§ 24375.58).

(d) Miscellaneous Exceptions

1. Agricultural operations in growing crops or raising stock;

2. Use in an orchard or citrus grove of a heater which does not produce unconsumed carbon at a rate in excess of one gram per minute.

(e) Use of other equipment in agricultural operations in growing crops or raising stock. These exceptions do not authorize operations or use of equipment in violation of regulations adopted by the Board (§ 24375.59).

C. Effective Date

The act does not become operative (§ 24375.10), until the establishment of the District is approved by a majority of the voters within the area comprising the District at the general election in November 1960 under the State election laws (Sections 2 and 3 of the Act), and provisions for submitting the question. (Sections 4 to 7).

II. Administrative Organization and Officers

A. Membership of the Board of Directors

The Board of Directors is the governing body of the district (§ 24375.17), and is composed of two representatives of each of the counties in the district, one of whom is appointed by the Board of Supervisors of each county from its members and the other by a "city selection committee" (§ 24375.11) in each county from among the mayors and city councilmen of the county (§ 24375.15). The first members of the board must be selected by October 28, 1959 (§ 24375.15).

The members of the first Board of Directors hold office until June 1, 1960.[1] Thereafter, each member appointed by the Board of Supervisors shall hold office for four years and each member appointed by the city selection committee shall hold office for two years. Vacancies in the board are filled in the same way as the vacating member was appointed, and any member may be removed the same way as he was appointed (§ 24375.16).

1/ This provision and those connected with it are probably without effect as being inconsistent with the provisions calling for an election on the formation of the district in November 1960. (See Item IC, supra.)

B. Powers and Duties of the Board of Directors

1. The board, as the governing body of the district, exercises all the powers of the district unless otherwise provided (§24375.17).

2. A majority of the board constitutes a quorum (§ 24375.18).

3. The district has power (§ 24375.30):

(1) To have perpetual succession;

(2) To sue and be sued;

(3) To adopt a seal and alter it;

(4) To receive, hold, make use of, and deposit all property of all kinds, both within and without the district;

(5) To establish and execute an effective program for the reduction of air contaminants within the district; (§ 24375.31)

(6) To do all things necessary to carry out the provisions of the act; (§ 24375.32)

(7) To maintain offices where they will best facilitate the accomplishment of the objects of the district; (§ 24375.33)

(8) To meet at such times and places as it may see fit (§ 24375.34), and may appoint a chairman from among its members, and such other officers as may be necessary; (§ 24375.35)

(9) To provide for necessary personnel and to set their manner and time of appointment, duties, and compensation; (§§ 24375.20, 24375.36, 24375.37)

(10) To contract with any city, county, or State department or any competent person or agency to conduct competitive examinations, to ascertain the fitness of applicants for employment, and to perform other services; (§ 24375.38)

(11) To contract and cooperate with any Federal, State, or local governmental agency, private industries or civic groups to carry out the purposes of this chapter; (§ 24375.21)

(12) To adopt a civil service system for any or all of the employees of the district, except that the executive secretary and attorney shall be exempt from the system and serve at the pleasure of the board; (§ 24375.39)

(13) Whenever feasible, in order to avoid duplication of services and facilities, secure necessary technical, administrative and operational services by contract with public agencies; (§ 24375.40)

(14) In compliance with stated procedures, to adopt rules and regulations to control the release of air contaminants to accomplish the purposes of this act (§§ 24375.70, 24375.71), but the district has no power to regulate the control of any activity carried on outside the district (§ 24375.41)

(15) To bring an action in the name of the people of California to enjoin any violation of the act or of any rule, regulation or order of the Board (§ 24375.64).

(16) When the air of the district is so polluted that it causes discomfort or property damage at intervals to a substantial number of the inhabitants of the district, to make and enforce rules and regulations to reduce the amount of air contaminants released within the district, but the rules shall not specify the design, equipment, type of construction, or method to be used in reducing the release of contaminants; (§ 24375.73) (See III - Procedures infra)

(17) To establish a schedule of fees which will yield a sum not in excess of the cost of administering the provisions as to variances for the filing of an application for a variance. (§ 24375.82) Such fees shall be paid to the district treasurer for the credit of the district; (§ 24375.83)

(18) To issue negotiable promissory notes subject to the approval of the voters of the district held in accordance with the appropriate provisions of the Government code; (§ 24376.20) (See Financial Matters, VC2, infra for details.)

(19) To estimate the expense of the district and apportion the sums required to meet them among the counties in the district; (§ 24376.21) (See Financial Matters, VB, infra for the manner of executing this power.)

(20) On the request of the Board of Supervisors of the counties containing more than one-half the population of the district, the board shall call an election to determine the question of dissolution of the district. Such election shall be held according to the appropriate provisions of the Government code. (§ 24376.30) (See, also, Dissolution item VL)

C. Compensation of Board Members

Each member of the Board of Directors shall receive the expenses incurred by him in performance of his duty, plus compensation of $25.00 per day for attending meetings of the board up to a maximum of $400 in any one year (§ 24375.19).

D. The Officers and Employees

1. Executive Secretary

The board may appoint an executive secretary who shall act as secretary of the board and shall be the chief administrative officer of the district (§ 24375.20).

2. Control Officer

a. The executive secretary, subject to the civil service system, shall appoint an air pollution control officer (§ 24379.20, 24375.45).

b. (1) The control officer enforces the provisions of the act, all orders, rules and regulations of the Board of Directors, and all variances and standards prescribed by the hearing board (§ 24375.46).

(2) The control officer may at any time require from any person, subject to the regulations of the board, such information or analyses as will disclose the nature, extent, quantity, or degree of air contaminants being, or to be, discharged from any source, and require such disclosure to be certified by a professional engineer registered in California. In addition, he may employ such an engineer to make an independent study and report as to such air contaminants. In performing his duties, such engineer is authorized to make any inspection of anything necessary to the report (§ 24375.74).

3. Hearings

a. If any person wilfully fails or refuses within a reasonable time to furnish the information or analyses requested by the control officer, or if the control officer finds that any order, rule, or regulation of the board is being violated after a reasonable time has been allowed for compliance, the control officer shall notify the hearing board of such facts and request a public hearing on the matter (§ 24375.75).

b. Within 30 days after this request, the hearing board shall hold a public hearing. Ten days' notice of such hearing shall be given to the person cited, to the control officer, to each board of supervisors and city council of the district, to the board of directors, and such other persons as the hearing board deems should be notified (§ 24375.76). At the hearing the hearing board may find that no violation exists or may take action as mentioned in item IIIB below (§ 24375.77).

4. Hearing Board

If the board of directors determines that it is necessary to adopt rules and regulations to control the release of air contaminants (see Procedures, item IIIA, infra), it shall within 30 days appoint a hearing board composed of five members, of whom one shall be a person admitted to practice law in California, and one shall be a chemical engineer (§24375.50). The members of the board serve for overlapping three-year terms. Of the first members, one shall be appointed for one year, two shall be appointed for two years, and two for three years(§ 24375.51).

III. Procedures

A. Adoption of Rules and Regulations

1. Rules and regulations to control the release of air contaminants in order to reduce or alleviate air pollution within the district shall be adopted only after the board has made a determination that they are necessary based on its information and after a public hearing. Notice of the hearing is to be published in a newspaper of general circulation in each of the counties in the district not less than 10 days prior to the hearing. (§ 24375.70)

2. After adopting a resolution of necessity, the board may make and enforce rules and regulations to carry out the purposes of the act, (§ 24375.71) but only after a public hearing held on ten days' notice by publication in a newspaper of general circulation published in the district (§ 24375.72).

B. Hearing Board Procedures

1. This procedure is applicable to enforcement proceedings (item IID2, supra) or application for variance (item IV, infra) in which a hearing is required to be held by the hearing board (§ 24376).

2. The hearing board shall select from its number a chairman (§ 24376.01).

3. Hearings may be held before the board in bank or before any three members designated to hold a hearing (§ 24376.02) in which case the concurrence of two shall be necessary for a decision. Any decision rendered upon two votes shall be automatically subject to review by the full hearing board (§ 24376.03) which may also, if at least two members are present, in its discretion, within 30 days rehear any matter decided by a single member (§ 24376.04).

4. The chairman of the hearing board may issue subpoenaes compelling witnesses to appear and to produce books, papers and documents material to the subject of the hearing (§ 24376.05). The subpoena shall be served in the same manner as a subpoena in a civil action (§ 24376.06). Failure to comply with the subpoena or to testify result in proceedings before a superior court for punishment for contempt(§§ 24376.07 and 24376.08), which is governed by rules applicable to the trial of a criminal case (§ 24376.09).

5. Witnesses may be sworn, and board members may administer oaths (§ 24376.10).

6. If the hearing board finds that any person is in violation of any rule or regulation of the board and that no variance is justified, after reasonable time has been allowed for compliance, it shall certify such facts to the district attorney of the county in which the discharge originates, who shall petition the superior court for an injunction restraining the continuance of any activity causing or threatening a pollution or a nuisance. The district attorney may associate with him the counsel for the board. The court shall issue an order requiring such person to show cause why the injunction should not be issued. The court then has jurisdiction of the matter and proceedings shall be conducted in the same way as any other action for an injunction. The court shall receive in evidence any order, rule or regulation of the hearing board, any transcript of its proceedings, and such further evidence as the court in its discretion deems proper (§ 24376.11).

7. Any aggrieved person, including the district, may maintain a special proceeding in a superior court within the district to determine the reasonableness and legality of any action of the hearing board, (§ 24376.12) at which proceeding a person filing shall be entitled to a trial de novo and an independent determination of the reasonableness and legality of such action and all such questions of law and facts involved (§ 24376.13).

IV. Variances

A. The act permits discharges in excess of its prohibitions and in excess of those contained in the rules and regulations of the board of directors if a hearing board or court, after a hearing, finds other standards to be all that is needed (§ 24375.80).

B. On its own motion or at the request of any person the hearing board may hold a hearing to determine to what extent and under what conditions a variance from the requirements of the act or the rules and regulations of the board is necessary (§ 24375.81).

C. The hearing board shall serve notice of the time and place of hearing upon the control officer, each board of supervisors and city councilmen of the district, the board of directors, and the applicant, if any, not less than 10 days prior to the hearing (§ 24375.84).

D. If the hearing board finds that because of conditions beyond control compliance with the act or with rules and regulations of the board will result in arbitrary and unreasonable taking of property or in the practical closing or elimination of any lawful business, occupation or activity without corresponding advantage in the reduction of air contamination, it shall prescribe other requirements not more onerous, applicable to plants and equipment operated either by named classes of industry or persons. No variance may permit the maintenance of a nuisance. In determining the conditions and extent of variance to be permitted, the hearing board shall exercise wide discretion in weighing the equities and advantages and disadvantages to residents of the district and any lawful business, occupation, or activity involved that would result from requiring compliance with the requirements. Before granting a variance, the hearing board shall find by resolution:

1. That the variance is necessary for the applicant to enjoy property rights that would be denied him by the strict application of the rules and regulations, and that such rights would not be denied generally by the same standard of enforcement.

2. Undue hardship, which would not occur generally, would result from strict application of the rules and regulations.

3. The effect of the variance upon health, safety, and the general welfare of the community, district, or area was considered (§ 24375.85).

E. The hearing board may revoke or modify any variance by written order after a public hearing held on not less than 10 days' notice to interested person (§ 24375.86 - .88).

F. An order permitting a variance shall specify its duration which shall not exceed one year (§ 24375.89).

G. If a local county or city ordinance has provided regulations similar to this act or the regulations adopted by the board of directors and has provided for the granting of variances, any variance in force prior to the establishment of the district shall be continued as a variance of the hearing board for its term or for one year, whichever is the shorter, unless modified or revoked by the hearing board as above provided (§ 24375.90).

V. Finances

A. Treasury

The district treasury shall be in the custody of the county treasurer of a county in the district designated by the board, and such treasurer shall be the district treasurer (§ 24376.26). The treasurers of the counties in the district shall pay into the district treasury all district funds held by them (§ 24376.25).

B. Revenue

1. On or before June 15 of this year, the board shall estimate the amount of money required by the district and shall apportion this amount to the counties, one-half according to the relative value of the real estate in the county as determined by the board and one-half according to the population of each county in the district, according to the latest information available. The total amount required shall not exceed one-half cent on each $100 of assessed valuation of all the property in the district (§ 24376.21).

2. Prior to June 15 of each year, the board shall inform the boards of supervisors of each county of the amounts apportioned to the counties. Each board of supervisors shall levy an ad valorem tax on the taxable real property of the county included within the district sufficient to secure the amount apportioned to it. Taxes shall be levied and collected together with taxes for county purposes and paid to the treasurer of each county to the credit of the district (§ 24376.22).

3. Taxes so levied shall be a lien upon all property within the county lying within the district, with the same effect as other liens or taxes, and collection may be enforced in the same manner as liens for county taxes (§ 24376.23).

C. Incurring Indebtedness

1. Prior to the first receipt by the district of revenue from taxes, the counties within the district may loan any available money to the district for purposes of organization and operation. The board shall add the amount borrowed to the first amount apportioned to the counties and shall repay the counties for all money borrowed from the first revenues received from taxation (§ 24376.24).

2. The district may issue negotiable promissory notes. Such notes shall be the general obligation of the district payable from taxes and shall mature not later than June 30 of the next fiscal year. The maximum interest which may be paid is six per cent per annum, and the aggregate amount of such notes shall not exceed 75 per cent of the district treasurer's estimate of income from taxes to be received in either the current or following fiscal years. No such issuance shall be made until approved by the voters in an election held under the provisions of the Government code (§ 24376.20).

VI. Dissolution

A. If boards of supervisors of counties containing more than half of the population of the district adopt a resolution stating that the existence of the district is no longer necessary or desirable for the public welfare and announcing an intention that to withdraw from it and dissolve the district, the board shall then by resolution call an election to determine question of dissolution on 30 days public notice (§ 24376.30).

B. If the majority of the voters favor such dissolution, the board shall so declare and proceed to wind up the affairs of the district. Surplus funds shall be paid over to the counties composing the district in proportion to the amounts last apportioned to the counties (§ 24376.30).

VII. Local Regulation

A. The Legislature does not intend by this chapter to occupy the field of air pollution control (§ 24375.60).

B. Local ordinances, which are stricter than or identical with the rules and regulations adopted pursuant to this act, are not prohibited, or superseded (§§ 24375.60, 24375.61).

C. Counties and cities may enforce the provisions of this act and regulations adopted pursuant to this act by local ordinances (§ 24375.60).

D. If any local ordinances are superseded, pending prosecutions for their violation shall not be affected (§ 24375.60).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Colorado

The State board of health is authorized to issue such orders and to adopt such rules and regulations, and to establish such standards as the board deems necessary or proper to carry out the purpose of the statute and to administer and enforce the public health laws of the State. The Board may hold hearings, administer oaths, subpoena witnesses and take testimony in regard to all matters connected with the duties of the Board. It may establish advisory committees to advise and confer with the Board concerning the public health aspects of any business, profession or industry within the State [§ 66-1-8, (4) - (6)].

In 1957 the State Board of Health was authorized to establish and enforce standards for exposure to toxic materials in the gaseous, liquid or solid phase and for exposure to environmental conditions, including radiation, that "may be deemed necessary" for the protection of the public health [§ 66-1-7 (20)].

1/ Citation in this digest refers to Colorado Revised Statutes, 1953 with 1957 pocket supplement.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Connecticut

The Interstate Sanitation Commission, composed of Connecticut, New Jersey and New York is authorized to make a study of air pollution within the boundaries of New Jersey and New York. The State of Connecticut is not to be liable for any of the expenditures necessary for the undertaking nor to be called upon to appropriate any funds for the purpose /§ N 185 (a)/. 1/

In 1957 Connecticut enacted a statute directing various State agencies to undertake studies regarding the need for changes in and additions to laws and regulations administered by each of them that would arise from the presence within the State of special nuclear materials and by-product materials. The agencies are directed to propose necessary legislation. Among the agencies included is the State department of health which is directed to study "hazards . . . to the public health and safety, including, without limitation, air pollution . . ." 2/

1/ The citations in this digest refer to the November 1955 Supplement to General Statutes of Connecticut, Chapter 163 - Interstate Sanitation Commission.

2/ All citations in this digest refer to New Laws, 1957, Regular Session, Public Act 4 /Senate Bill No. 240/

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Delaware

Summary

The Delaware Air Pollution Authority administered by the State Board of Health and composed of 8 members (ex officio and appointive) is authorized to study air pollution, to issue rules and regulations based on a statewide standard, and to enforce them as well as statutory provisions, to accept and receive moneys from the Federal Government, industry or other source, and to hold hearings regarding violation of the pertinent statutes or rules, regulations, and orders of the Authority. The statute prohibits such air pollution as constitutes a public nuisance.

I. General Statement

In 1957 Delaware created an Air Pollution Authority to be administered by the State Board of Health to maintain within its jurisdiction a reasonable quality of air consistent with protecting the safety, welfare and comfort of the people of the State and to prevent the pollution of the air with impurities which menace the health and welfare of the people of the State, to the end that the least possible injury shall be done to human, plant and animal life and property.

II. Administrative Organization

A. Members of the Authority (§ 1610)

1. The 8 members of the Authority consist of the Executive Secretary of the State Board of Health, the State Sanitary Engineer, the Director of the Water Pollution Commission, a representative each of the University of Delaware's Agricultural Department and Mechanical Engineering Divisions and 3 members to be appointed by the Governor from industry, and serve staggered terms of 4 years each after the initial term.

2. The State Sanitary Engineer is the secretary.

3. The members elect a chairman from among themselves to serve for a year. The chairman has the authority to call meetings.

4. Four members constitute a quorum.

B. Powers and duties (§ 1611)

1. Develop a program for prevention and control of all sources of air pollution of the State.

2. Advise, consult and cooperate with other agencies, and groups.

3. Encourage and conduct studies, investigations and research relating to air pollution.

4. Collect and disseminate information relating to air pollution.

1/ The citations in this digest are from Chapter 16, Title 16, Delaware Code, Annotated, Pocket Supplement.

5. Promulgate rules and regulations and issue orders when necessary to promote the correction of air pollution problems.

6. Consider complaints, make investigations and hold hearings.

7. Require any person to submit plans for the removal of air contaminants.

8. Encourage voluntary cooperation in preserving the purity of the air.

9. Employ personnel, purchase materials and supplies and enter into contracts.

10. Enter at reasonable times upon any private or public property for the purpose of investigating conditions relating to air pollution.

11. Enforce compliance with State statutes relating to air pollution.

12. Represent the State in negotiations for interstate compacts relating to air pollution control.

13. Select advisory committees to study and advise upon specific problems that may arise from time to time.

14. Cooperate with and receive moneys from the Federal Government or any industry or other source (§ 1612).

III. Nuisances Prohibited (§ 1620)

No person shall discharge into the air solids, liquids, or gases causing such injury to human, plant or animal life, or to property, as constitutes a public nuisance. No person shall cause, erect or continue any nuisance contrary to the provisions of Chapter 16, Title 16 of the Delaware Code.

IV. Procedures

A. Proceedings to abate public nuisances created by air pollution may be instituted at law or in equity in the name of the State on behalf of the Authority by the Attorney General (§ 1621).

B. Hearings (§ 1622)

1. When a violation of the statutory provisions or of an order of the Authority regarding air pollution occurs the Authority gives notice to the alleged violator to correct the complaint within a reasonable period or to appear before the Authority at a specified time and place.

2. The alleged violator may appear personally or by counsel at the hearing and upon the evidence there produced the Authority issues an order.

3. The hearings may be held before an officer designated by the Authority.

4. The Authority may take action for summary abatement of the nuisance to protect the public health or welfare.

5. The Authority may designate a member or representative to administer oaths, examine witnesses, and issue notices of hearings and subpoenas.

6. A record of the hearings with findings and conclusions is to be filed with the Authority.

C. Appeals (§ 1624)

A person whose interest is substantially affected by an order or decision of the Authority may appeal to the Superior Court of the county in which the circumstances causing the appeal originated. The Superior Court shall determine the matter as a suit in law and equity.

V. Violations and Penalties (§ 1625)

A fine of not less than $25 nor more than $500 for each day a violation of the statutory provisions regarding air pollution control or of the rules, regulations or orders of the Authority continues is authorized.

VI. Financing (§ 1625)

A sum of $36,000 was appropriated to the credit of the Air Pollution Account of the State Board of Health for use by the Authority during the biennium ending June 30, 1959.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

District of Columbia

The discharge of dense smoke from any building, stationary or locomotive engine, or motor vehicle, place or premises within the District is prohibited. It is required that all ashes, cinders, rubbish, dirt and refuse be removed from buildings, engines, furnaces or boilers to a proper place to prevent "detriment or annoyance" (§ 6-801).

The District Commissioners are authorized to make regulations to effectuate the provisions of §§ 6-801 - 804 (§ 6-802).

Violation of the statutory provisions or a regulation is punishable by a fine of up to $300 for each offense (§ 6-803).

Enforcement of §§ 6-801 - 804 is the responsibility of the Commissioners of the District. They may direct the police or health departments or any officer or employee of the District to perform service necessary in such enforcement (§ 6-804).

1/ Citation in this digest refers to District of Columbia Code - 1951 edition.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Florida

1. Air Pollution Control Commission

I. General Statement

The 1957 Florida Air Pollution Control Act established an air pollution control commission in the State Board of Health (§ 403.03), and provided for the establishment of air pollution districts and for State enforcement of the commission's air pollution control rules and regulations in such districts.

Air pollution is defined as:

"The presence in the outdoor atmosphere of substances in quantities which are injurious or reasonably could be expected to become injurious to human, plant or animal life; provided that all aspects of employer-employee relationship as to health and safety hazards are excluded; and provided further, the term air pollution shall not be deemed to include smoke effluent from pulp or paper mills equipped with and operating electrostatic precipitators or other mechanical devices whereby not less than ninety (90%) per centum of the solids of such smoke are removed therefrom." [§ 403.02(3)]

II. Administrative Organization

A. Air Pollution Control Commission

1. Composition and organization

The air pollution control commission is composed of ten members, residents of Florida, to be appointed by the Governor as follows: the State health officer or some member of the staff of the State Board of Health designated by him; the commissioner of agriculture or a member of the Department of Agriculture designated by him; a person actively engaged in raising cattle; the director of the Florida industrial commission or a member of its staff designated by the director; one professional engineer experienced in sanitary engineering; two representatives from industry; two citizens of Florida representing the general public; and a person actively engaged in growing citrus (§ 403.03).

The commission is to elect annually from its membership a chairman and vice chairman. The State sanitary engineer is to be secretary of the commission (§ 403.07).

Five members of the commission constitute a quorum, but any action must be by at least a majority of the entire commission (§ 403.07).

After the expiration of terms of the members of the first commission terms are to be for four years each and staggered (§ 403.04).

Members of the commission serve without compensation but are entitled to statutory per diem and travel expenses (§ 403.06).

The governor may remove any appointed member for cause after public hearing (§ 403.05).

1/ The citations in this digest refer to Florida Statutes Annotated, Pocket Supplement, as amended by S.B. 967, New Laws of Florida 1959 Regular Session.

2. Powers and duties

The commission has the power to consult with the Board of Health on all matters relating to the carrying out of the Act.

a. Rules and regulations

The commission has the power to formulate, adopt, promulgate, amend and repeal rules and regulations.

(1) without prior notice and hearing to control and regulate the internal affairs of and procedure before itself and

(2) after notice and public hearing to control and prohibit pollution of the air in any air pollution control district if at the public hearing a preponderance of the evidence shows need for such action (§ 403.09).

b. Hearings

(1) The commission is required to have five or more members present for any hearing which it holds.

(2) Any member has the power to subpoena witnesses, administer oaths, and require the production for examination of books or papers, excluding financial records, relating to any matter under investigation at the hearing. Information regarding secret processes or methods of manufacture or production are to be kept confidential and are not to be disclosed in public hearing before the commission, insofar as practicable (§§ 403.11 - 403.16).

c. Creation and dissolution of districts

The commission may organize and create within the State such air control districts as are necessary for the prevention of air pollution as defined by statute. Such districts may consist of one county or any part thereof, or of two or more counties or parts thereof. A hearing after prior notice before the commission is required before the creation or dissolution of such a district (§ 403.12).

The hearing may be called

(1) upon petition of the board or boards of county commissioners within the proposed district or

(2) upon petition of 15 per cent of the free holders within the proposed district or

(3) upon the commission's own motion.

3. State Board of Health

1. The Board is required to control air pollution in accordance with the rules and regulations adopted by the commission and for this purpose has power to

a. conduct research programs to determine causes, effects and hazards of air pollution,

b. conduct State-wide programs of air pollution control education,

c. require the registration of persons engaged in operations which may result in air pollution in any air control district,

d. require the filing of reports by such persons engaged in operations which may result in air pollution if such person consents or if the board, after notice and hearing, so directs,

e. enter and inspect any building or place except private residences to investigate sources of air pollution or to ascertain compliance with the rules and regulations of the commission if the owner consents or the board, after notice and hearing, so directs; prior to the inspection, the inspector must execute an affidavit that all information obtained will be kept confidential except as it relates to air pollution [§ 403.10(1-4)].

f. receive or initiate complaints of air pollution, hold hearings and institute legal proceedings for the prevention of air pollution and to recover penalties provided by statute,

g. cooperate with and receive money from the Federal government or from private sources for the study and control of air pollution (§ 403.10).

2. The board with the approval of the commission has power to employ necessary personnel (§ 403.08).

III. Procedures

A. Complaint and conferences

Upon complaint filed with the board or upon its own belief that any person is violating a rule or regulation promulgated by the commission, the board is required to conduct a prompt investigation. If such violation is found to exist the board attempts to prevent such violation by conference, conciliation or persuasion (§ 403.13).

B. Notice and hearing

If the conference, conciliation or persuasion fails to halt the violation, written notice and a copy of the complaint requiring the person named in the complaint to appear before the commission, at a time and place stated in the notice, are served (§ 403.14).

C. Hearing procedure

The respondent to the complaint may file a written answer and may appear at the hearing in person or by representative, with or without counsel and may submit testimony. Testimony is under oath and recorded, but strict rules of evidence are not applicable (§ 403.15).

D. Judicial review and appeals (§ 403.19)

1. Review by the District Court of Appeals exercising jurisdiction over the greater portion of the area in which the air pollution control district lies is available to a person affected by the adoption or repeal of a rule or regulation or by the entry of any order of the commission, within 30 days after the commission action.

2. Within 20 days after the receipt of appeal the secretary of the commission is required to prepare, certify and forward to the appellant or his attorney a transcript of the proceedings, a copy of the order of the commission, and a copy of the notice of appeal.

3. Within 30 days from the filing of the notice of appeal the appellant is required to file with the clerk of the circuit court the documents forwarded to him by the secretary of the commission.

4. The proceedings of the court are to be confined to an examination of the record, including the transcript of all evidence, and no presumption is to be indulged concerning the correctness of the action of the commission.

5. These provisions do not preclude other appropriate proceedings in law or equity to determine the validity of any action of the commission.

IV. Violations and Penalties

A. If at the hearing the commission determines that the person against whom the complaint was made is violating any rule or regulation promulgated by the commission, it is required to fix a reasonable time during which that person is required to take the measures necessary to prevent the violation and to give periodic progress reports (§ 403.17).

B. If preventive and corrective measures are not taken in accordance with the order of the commission, the commission may institute proceedings in any court of competent jurisdiction for injunctive relief to prevent any further violation (§ 403.18).

V. Financing

Funds are appropriated by State legislature. Sixty-five thousand dollars was appropriated for the 1957-1959 biennium to carry out the provisions of the air pollution control act (§ 403.21).

VI. Scope and Construction

A. No civil or criminal remedy which is available for a violation of a rule or regulation of the commission is impaired by the Act (§ 403.20(1)).

B. No ordinances or rules or regulations of a municipality, county or board of health not inconsistent with the Act are suspended by the Act (§ 403.20(2)).

C. The provisions in the Act for appeal do not preclude any person from pursuing other proceedings in law and equity to determine the validity of action by the commission (§ 403.19(4)).

VII. Effective Date

Approved June 18, 1957.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Florida

2. Sarasota County

I. Authority of County Commissions

A. The Board of County Commissioners of Sarasota County is authorized to adopt an air pollution code to correct, remove or prevent air pollution in all its forms, including smoke, vapors, dust and wind borne matter originating within the area to which the code is applicable.

B. Code to be adopted after public hearing which shall be known as the Sarasota Air Pollution Control Code (§ 4).

II. Applicability of Code

A. Code is to apply to all areas in Sarasota County outside the corporate limits of any municipality (§ 1).

B. Any municipality may adopt the provisions of the act and thereafter its territory is included within the area to which the code is applicable (§ 2).

III. Administration

A. The Board may establish inspection fees to defray the costs of inspection and enforcement (§ 5).

B. An employee of the county may be designated to act as air pollution control inspector (§ 6).

IV. Enforcement

A. After adoption of code, it is unlawful for any person to construct, reconstruct, alter, repair or use prohibited fuel and refuse burning plants, processes, equipment and devices without a permit (§ 8).

B. The Board may revoke any permit upon a determination that the activity for which the permit was issued is in violation or not in conformity with the Code (§ 8).

C. Violations of the Act or Code are declared to be misdemeanors (§ 11).

D. In addition to other remedies, the Board may constitute any appropriate action in a court of record to enforce the Act, the Code or any order, requirement or decision pursuant thereto (§ 10).

E. Exempted from this Act are the burning or incineration of domestic waste, trees, stumps and brush accumulated as part of land clearing operations and any incineration for domestic purposes (§ 8).

1/ Citations are to H.B. 1951, New Laws of Florida, 1959 Regular Session.

V. Appeals

A. Any person aggrieved by administrative action taken under the Act or the Code may appeal to the Board for a hearing within 60 days of the action.

B. A notice of public hearing is to be published by the Board which may require the appellant to pay in advance the cost of publication of the notice. This payment will be refunded if the action complained of is not fully affirmed on appeal.

C. In hearing such appeals, the Board may obtain the testimony of expert witnesses and pay them witness fees.

D. After the hearing, the Board shall affirm, modify or reverse, in whole or in part the action appealed from (§ 8).

VI. Effective June 17, 1959.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Florida

3. Brevard County

I. General Statement

The 1959 Legislature established a policy of preserving the highest standards of purity of the air and waters of Brevard County and made the Board of County Commissioners the Brevard County Pollution Control Commission. It is charged with:

1. Promotion of recreational resources;

2. Propagation and protection of wildlife;

3. Facilitation of the growth of desirable natural plant and animal life and industrial development of the County consistent with maximum employment and full industrial development of the County.

To accomplish these ends, it may require the use of all available and reasonable methods to prevent and control water and air pollution (§ 1).

Air pollution is defined as "The presence in the outdoor atmosphere of substances put there by man in concentrations sufficient to cause an unreasonable interference with the comfort, safety, or health of man or the unreasonable (sic) use and enjoyment of his property." [§ 2(2)].

II. Administrative Organization

The Board of County Commissioners is established as the Brevard County Pollution Control Commission (§ 1) with jurisdiction to control water and air pollution in the County (§ 3).

A. Functions of the Board

The Board has the following functions: [2]

1. To enforce provisions of the Act;

2. For this purpose, to adopt rules, regulations and standards consistent with available and reasonable methods of controlling or preventing pollution and consistent with the public welfare (§ 4).

In adopting regulations (§ 24), the Board shall take into account the reasonableness of the activities involved, including:

(a) The character and degree of injury to, or interference with the comfort, safety, health, and the reasonable use and enjoyment of property;

1/ House Bill 1839 which became law without approval June 20, 1959. References are to sections of this Act.

2/ Matters concerned only with water pollution omitted.

(b) Social and economic value of activity involved;

(c) Suitability of the activity to the area;

(d) The scientific and economic practicability of reducing or eliminating the discharge.

3. When a pollution emergency exists, to bring action for relief against such pollution by injunction or abatement (§ 5).

B. In carrying out these purposes the Board may:

1. Appoint a control officer to observe and enforce the provisions of the Act and rules and regulations adopted pursuant to the Act (§ 19).

2. Enter, or authorize the entry of, any property and to inspect and investigate conditions of pollution of water or air (§ 8).

3. Request the aid of educational institutions or State agencies (§ 9).

4. Authorize variances from the rules and regulations it lays down if--(§ 20)

(a) Compliance with the rules and regulations would result in depriving persons of the use of their property.

(b) Without corresponding advantage to the public in the control of air pollution.

III. Rules and Regulations

A. Rules and Regulations

Rules and regulations shall be adopted by the Board after a public hearing held after 10 days' notice (§ 24).

B. Abatement

Whenever the control officer is of the opinion that a person is violating any provision of the Act or any rule or regulation relating to air pollution, he shall notify such person of his determination by registered mail. Within 15 days of the receipt of such notice that person shall file with the control officer a full report as to the steps taken or to be taken to control or prevent the alleged air pollution. The control officer may then issue his order setting forth the particulars in which the person is failing to comply with such rules and regulations and ordering him to remedy such failure within a stated time. The order shall be sent by registered mail to the person affected (§ 22).

C. Variance

The Board, on its own motion or that of any interested person, may hold a hearing to determine the extent, if any, and under what conditions it will permit the variance from the requirements established by the Act as to air pollution. Ten days' notice shall be given to the petitioner and to the control officer, if any, of the time and place of holding the hearing (§ 20). In determining whether the variance shall be permitted, the Board shall exercise a wide discretion in weighing the equities involved and the advantages and disadvantages to residents of the area, and to lawful business and activities, in the area, resulting from requiring compliance or permitting variance. If a change in conditions results

in a substantial change in the equities and the advantages and disadvantages, the Board may revoke or modify the variance by written order held after 30 days notice to the persons or classes affected (§ 21).

IV. Miscellaneous

A. Crimes and Offenses

Persons found guilty of wilfully violating any provision of the Act or final orders or directives of the Board or court issued in pursuance of the Act are guilty of a misdemeanor and may be punished by a fine of not more than $250.00 or by imprisonment in the county jail for not more than one year or both. Each day in which such violation continues is a separate offense.

B. This Act does not apply to smoke from fire set or permitted by any public officer in the performance of his official duty:

1. For weed abatement.

2. For the prevention of fire hazards.

3. For instruction in methods of fire fighting.

Neither does this Act apply to smoke from agricultural fires set or permitted by the County Agricultural Agent in the course of his official duty:

1. For disease prevention.

2. For pasture control.

3. Agricultural or forest harvest operation (§ 23).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Georgia

Any nuisance which is manifestly injurious to the public health may be abated by the order of any two or more justices of the peace of a county founded upon the verdict of twelve freeholders of the same county. The order is directed to and served by the sheriff of the county (§ 72-201).

A person who, after notice to abate, erects or continues such a nuisance is guilty of a misdemeanor (§ 72-9901).

1/ Citations in this digest refer to Code of Georgia Annotated, 1937 edition.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Hawaii

Within the Territorial Board of Health a bureau of industrial hygiene is required to enforce the rules and regulations of the board relating to industrial hygiene, and, among other things, to detect, prevent and control atmospheric pollution.

The bureau may conduct research and investigations, and disseminate knowledge and information to the public, concerning conditions in places of employment (and areas and places adversely affected by such places of employment) which may be responsible for the development of occupational diseases, afflictions and poor health, and concerning all other matters which are the subject of its duties (§ 46-70).

The Board of Health of the Territory, with the approval of the Governor, has the power to make such regulations as it deems necessary for the public health respecting nuisances such as gases or vapors, foul or noxious odors, causes of sickness or disease within the Territory and on board of any vessel (§ 47-1).

When such nuisance is found on private property the owner is notified to abate it at his own expense and within such reasonable time as the board may deem proper. If abatement is not accomplished by the owner within the time set by the board, upon obtaining an order from the district court, may abate the nuisance (§ 47-2).

If the nuisance is found on public property the board notifies the person officially in charge to abate. If such abatement is not accomplished within the time set by the board abatement may be secured as in the case of a private owner (§ 47-4).

If it be necessary for the preservation of public life or health to enter any land, building or vessel to abate, examine, remove or prevent any nuisance a board member or agent, if refused entry, may request the district magistrate of the district where the nuisance is located to issue a warrant for entrance thereon to prevent or remove the source of the nuisance (§ 47-5).

The high sheriff, all police officers and physicians are required to report the existence of a nuisance injurious to the public health (§ 47-7).

A violation of the statute or order of the board is punishable by a fine of not more than $100 and the court may order the defendant at his own expense to carry out the provision or order violated. No appeal shall suspend such order pending the appeal (§ 47-8).

The board of supervisors of the city and county of Honolulu have power to regulate and prescribe the construction of chimneys and smokestacks and to compel the building and cleaning of same, and to regulate and prevent the emission of dense smoke, soot or poisonous gases therefrom and to declare the same a nuisance (§ 149-86.7) and to enact and enforce all ordinances necessary to protect the health of the city and county and its inhabitants (§ 149-86.9).

1/ Citations in this digest refer to Revised Laws of Hawaii, 1955

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Hawaii

Supplement No. 1

I. General Statement

The "Air Pollution Control Act" of 1957 establishes a territory-wide program of air pollution control under the Territorial Board of Health. The Board is authorized to designate specific areas for air pollution control measures (§ 5) and to organize county advisory air pollution control associations (§ 9). Such associations are to advise the Board of county air pollution problems (§ 10) and to discuss and report to the Board on proposed regulations of local application which the Board proposes to adopt (§ 11).

"Air pollution" is defined as "the presence in the outdoor atmosphere of substances in quantities which are injurious to human, plant or animal life or to property or which unreasonably interferes with the comfortable enjoyment of life and property throughout the Territory and in such areas of the Territory as shall be affected thereby." Hazards incident to the employer-employee relationship are excluded. "Substances" include smoke, fumes, odors, gases, solids, particulate matter, etc., or any combination.

II. Administrative Organization

A. Enforcement agency

The Board of Health of the Territory is directed to "control" air pollution in accordance with rules and regulations promulgated by it (§ 6) ("control" is defined as including prohibition [§ 3]). Such rules and regulations may designate specific areas for the control of air pollution (§ 5).

B. Duties and powers

1. Administrative

The Board is authorized to

a. Establish an air pollution control section, hire employees and assign duties;

b. Conduct and supervise research programs on causes, effects and hazards of air pollution;

c. Conduct and supervise program of air pollution control education and to prepare and distribute information on the subject;

d. Appoint masters to conduct hearings and investigations under § 7-27 R.L. Hawaii 1955;

e. With the approval of the governor, cooperate with and receive money from the federal government or any political subdivision of the Territory, or from private sources for the study and control of air pollution (§ 6 a-c, g, h);

1/ Citations in this digest refer to Act 60, Laws of 1957.

f. Organize county advisory air pollution control associations as it may determine. Members serve without compensation at the pleasure of the Board and are entitled to necessary expenses incurred. A Board employee acts as secretary (§ 9).

2. Enforcement

a. Permits - The Board is authorized to require all persons and governmental agencies engaged or desiring to engage in operations which may result in air pollution to secure a permit prior to installation, or operation or continued operation after the effective date of the act. The permit will be granted only if operations comply with regulations. The Board may require the filing of plans and reports by such persons, dealing with the installation and its operation (§ 6 d).

b. Inspection - The Board has the authority to enter and inspect, during reasonable hours, any building or place (except a building designed and used exclusively as a private residence) for the purpose of determining compliance with regulations and to make reasonable tests. Confidential information obtained by employees within the scope of employment shall be disclosed only in connection with official duties as it relates to air pollution (§ 6 e). Any disclosure not authorized by the act is a misdemeanor punishable by fine up to $1000. The employee is also liable in damages to any person injured by the disclosure (§ 8).

c. Adoption of regulations - All regulations of strictly local application must be submitted to the appropriate county air pollution association (if there is one) for discussion and report (§ 10).

d. Fees - A fee schedule may be established by the Board to cover the cost of issuing permits and making the necessary inspections, which fees shall be paid by all applicants. The fees are appropriated to the Board for the expenses of the program (§ 7).

III. Procedures

A. Investigation of violations

Upon written complaint, or when the Board has cause to believe there is a violation, an investigation shall be made. If the Board finds a violation exists, the Board shall endeavor to correct it by conference, conciliation and persuasion (§ 12).

B. Hearing

1. If voluntary correction cannot be obtained within a reasonable time, a written notice of hearing before the Board, or a master or masters, together with a copy of the complaint, is to be served (§ 13).

2. The respondent may file a written answer and may appear at the hearing, with or without counsel and submit testimony. The testimony shall be under oath and stenographically recorded, and the parties are not bound by technical rules of evidence (§ 14).

3. Three or more members of the Board, designated by the president, must sit at a board hearing. Trade secrets are not to be disclosed in public hearing before the Board so far as practicable and shall be kept confidential. At the request of respondent the Board shall subpoena witnesses and require the production of records (§ 15).

C. Orders and their enforcement

1. Issuance: After the hearing, if the Board determines the respondent is in violation, it enters an order accordingly and sets a reasonable time for taking required corrective measures and requires periodic progress reports. Secret processes, etc., revealed by such reports are to be kept confidential (§ 16).

2. Injunctive relief: If the order is not complied with, the Board may seek injunctive relief in any court of competent jurisdiction (§ 17).

3. Judicial review: Any person aggrieved by the decision of the Board may appeal to a circuit judge within twenty days after the decision is rendered, and obtain a de novo hearing. A notice of appeal is filed with the Board which must forward the notice, together with a certified copy of the hearing, to the clerk of the circuit court to which the appeal is to be taken (§ 19).

IV. Penalties

1. If corrective action is not taken within nine days of the time set in the order of the Board, any private person or agency shall be liable to a penalty of $100 for each seven-day period or fraction thereof that the violation continues beyond such ninth day. The Board may institute legal proceedings in the name of the Territory to recover the penalty (§ 18).

2. Any person who interferes with or obstructs an employee conducting an inspection is guilty of a misdemeanor and subject to a fine of not more than $500 (§ 25).

V. Miscellaneous

1. Technical defects shall not invalidate any rule or regulation of the board, and they shall not be subject to judicial review or their enforcement restrained except in connection with an appeal under § 19 of the act (§ 20).

2. When an appeal is taken, any action for enforcement or prosecution for violation may be stayed by the judge having jurisdiction until the determination of the appeal (§ 20).

3. Officers or employees shall not be criminally liable for actions in the performance of their duties (§ 21).

4. County ordinances and regulations not inconsistent with this act or regulations thereunder shall continue in effect and may be adopted in the future. Inconsistent county ordinances and regulations are declared invalid (§ 23).

VI. Effective date - May 6th, 1957.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Idaho

I. General Statement

The "Idaho Air Pollution Control Act (1959)" established a State-wide program for the prevention and abatement of air pollution, established an Air Pollution Control Commission in the State Board of Health, stated its authority and procedure, designated the State Board of Health as the policing agency, authorized programs of research and education and provided for judicial review.

Air pollution is defined in the Act as "the presence in the outdoor atmosphere of substances put there by man in concentration sufficient to cause an unreasonable interference with human, plant or animal life, or the reasonable use of property." All aspects of employer-employee relationships as to health and safety hazards are excluded from the definition. (§ 2)

II. Administrative Organization

A. Organization

An Air Pollution Control Commission is established in the State Board of Health consisting of nine Idaho residents appointed by the Governor as follows:

1. the Administrator of Health or his designate from within his department;
2. the designate of the Commissioner of Agriculture;
3. a member of the faculty of the University of Idaho designated by the University President;
4. the designate of the Idaho Municipal League;
5. a representative of the labor unions designated by the Governor;
6. the designate of the Idaho Mining Association;
7. the designate of the Idaho Forest Products Industry;
8. the designate of the Idaho Chemical Industry;
9. a member of the public appointed by the Governor.

They shall serve overlapping four-year terms (§ 4) and serve without compensation although they shall be reimbursed for expenses incurred (§ 5). The members shall annually elect a chairman. Five members constitute a quorum for the transaction of all business. (§ 6. See also III D below).

B. Powers of the Commission

The Commission has the following powers: (§ 8)

1. To conduct and supervise research programs relating to air pollution.

1/ References are to Idaho Session Laws of 1959, Senate Bill No. 2 approved March 13, 1959.

2. To conduct and supervise Statewide programs of air pollution control education.

3. To cooperate with and receive money from the Federal Government, from county or municipal governments and, with approval of the Governor, from any other public or private source.

4. To develop a comprehensive program for the prevention and control of air pollution in the State.

5. To advise and consult with other interested groups, Federal, State, local and private, in the furtherance of the purposes of the Act.

6. To adopt, amend and repeal rules and regulations to control and prohibit air pollution throughout the state or in or affected areas of the State. A public hearing on any such proposed action is to be held after 30 days' notice by publication; which must be given to the public to present evidence. Any persons heard at the hearing must be given written notice of the determination of the Commission. No rule, regulation or amendment or repeal thereof, shall be effective until 60 days after adoption by the Commission.

7. After the adoption of rules and regulations, to initiate and to receive complaints of air pollution, to hold hearings on the same and enter orders to diminish and abate air pollution and to enforce its rules and regulations; and to institute legal proceedings, including suits for injunctions for the enforcement of its orders, rules, and regulations and to prevent air pollution and enforce penalties.

8. To organize county air pollution divisions in each county in which it shall be advisable to study air pollution problems locally. (§§ 12 and 13) All rules and regulations of local application may be submitted to such divisions for study and report (§ 14). Such divisions shall be composed of residents of the county appointed by the Commission without compensation.

9. To employ necessary personnel (§ 7).

C. Powers of the Board of Health (§ 10)

The Board has the authority

1. To cooperate with the Commission in conducting and supervising research and education.

2. To cooperate with the Commission in requiring the registration of persons engaged in operations that may result in air pollution, and, on direction of the Commission, after a hearing to the person involved, to require the filing by such persons of reports relative to air pollution including location, height of outlet, composition of effluent etc.

3. To police air pollution in accordance with rules and regulations adopted by the Commission.

4. To enter and inspect any place, except private residences, both to investigate sources of air pollution and to ascertain compliance with rules and regulations of the Commission. Prior to such inspection, the inspector must sign a statement before a notary public that all information gained by such inspection must be kept confidential except as it relates to air pollution. Copies of analytical reports on samples taken shall be promptly furnished to persons suspected of causing pollution.

5. To initiate, receive and file complaints with the Commission.

III. Procedures

A. On receipt of a written complaint, or if the Board of Health has reason to believe that any person is violating any rule or regulation of the Commission, the Board shall cause an investigation of the situation to be made, and if it finds that such violation exists it shall endeavor, by conference, conciliation and persuasion, to eliminate any source or cause of air pollution (§ 15).

B. If the above efforts fail in a reasonable time to correct the situation the Board shall file a written complaint with the Commission and cause a copy of it, together with a notice of time and place of hearing, to be served on the persons complained against (§ 16). Such persons may file a written answer to the charges, may appear and submit evidence or both (§ 17).

C. Testimony at the hearing will be under oath and recorded stenographically, but the strict rules of evidence in courts of law shall not apply. Copies of the transcript shall be available to respondents on their request and at their expense (§ 17).

D. All hearings by the Commission shall be held before three or more members designated by the chairman. Any member of the Commission shall have the authority to subpoena witnesses and papers and administer oaths. On request of respondents the Commission shall subpoena witnesses and papers relating to the matter under inquiry. The affirmative vote of at least five members of the Commission is necessary to enter any order or to adopt any rule or regulation. Information as to secret processes or methods shall not be disclosed in public hearing insofar as practicable and shall be kept confidential (§ 11).

E. After the hearing if the Commission determines that the person complained against is violating any rule or regulation it shall fix a reasonable time to take measures to correct the situation and shall require periodic progress reports. Information in such reports as to secret processes or methods of operation shall be kept confidential (§ 18).

F. Persons found by the Commission to have violated any rule or regulations shall be liable for penalty of $500.00 per week, commencing the 10th day after the time fixed for the taking of preventive or corrective measures. The penalty may be collected in a civil action in the District Court in the county where the pollution originates. All penalties collected are paid into the county common school fund (§ 19).

G. If corrective measures ordered by the Commission are not taken, the Commission may institute a civil action for injunctive relief to prevent further violation of rules and regulations. (§ 19)

H. 1. Any person whose interest is substantially affected by the adoption or repeal of any rule or regulation, including orders establishing or dissolving county air pollution control divisions, may have such action reviewed by the District Court, exercising jurisdiction over the major portion of the area where the affected property lies or the county air pollution control division is located, by filing a notice of repeal with the Secretary of the Commission within 30 days of the Commission's action.

2. Within 20 days of receipt of the notice of appeal the Secretary of the Commission shall certify and furnish the appellant a copy of transcript of the proceedings of the Commission and a copy of the order or decision appealed from.

3. If the appellant files these documents within 30 days from the filing of the notice of appeal with the proper District Court, such court has complete jurisdiction over the matter. The proceedings in the court are by trial de novo.

4. Thereafter a final order of the District Court may be appealed to the Supreme Court.

5. These provisions shall not displace any other appropriate method of testing the validity of any action of the Commission.

IV. Miscellaneous

A. Neither this Act nor rules and regulations adopted pursuant to it affect ordinances or regulations issued by any municipality, county or board of health, or the right of such agencies to adopt ordinances or regulations not inconsistent with the Act and rules and regulations thereunder (§ 22).

B. Existing civil and criminal remedies for acts which may be a violation of a rule or regulation of the Commission are preserved and functions vested in the Board of Health by other acts are not affected (§ 21).

C. The Commission, Board, County Air Pollution Control Divisions and courts in making rules and regulations and in enforcing the provisions of this Act shall take into consideration all facts bearing on the reasonableness of the activity involved and the regulations proposed to control it (§ 9) including:

1. The harm caused or threatened to be caused (§ 9(a)).

2. The social and economic value of the activity involved (§ 9(b)).

3. Its suitability to the area in which located (§ 9 c).

4. The scientific and economic practicability of abating the pollution (§ 9 d).

5. The exercise of a wide discretion in weighing the equities involved and the advantages and disadvantages to the residents of the area and lawful business therein of requiring compliance with specific requirements of rules and regulations.

Miscellaneous

Anything which is injurious to health, or offensive to the senses or is an obstruction to the free use of property is a nuisance, (Idaho Code, Title 18, Section 5901) the maintenance of which is punishable as a misdemeanor. (Ibid. 18-5903).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Illinois

The Department of Public Health has power to maintain physical, chemical, bacteriological and biological laboratories to make examinations of atmosphere and equipment and processes relating thereto and to make such diagnostic tests for the evaluation of health hazards necessary for the protection of the people of the State. 1/

1/ Section 55 (6), Smith-Hurd Illinois Annotated Statutes. Chapter 127, 1953 edition.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Indiana

The State Board of Health may establish reasonable rules to control nuisances dangerous to the public health [§ 35-216 (1)].

Incorporated towns have the power to declare what shall constitute a nuisance and to prevent, abate and remove the same, and take other measures for the public health as the board of town trustees may deem necessary [§ 48.301-(4)].

Health and Hospital Corporations are established in each county with a population of more than 500,000. These corporations are municipal corporations (§ 35.903) and the board of trustees is empowered to enact ordinances declaring what shall constitute a public health nuisance and to prevent and abate the same [§ 35-928-3 (b)].

Under the Motor Vehicle Code and the chapter thereof dealing with "traffic on highways--equipment" [§ 47-2230 (b)] provides:

> "The engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke."

Section 47-2201 of the same code and chapter provides:

> "(a) It is a misdemeanor for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which . . . is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required by this article (§§ 47-2201 - 47-2238). . ."

1/ Citations in this digest refer to Burns Indiana Statutes Annotated.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Iowa

I. General Statement

In 1951 Iowa amended its statutory definition of nuisance to include "the emission of dense smoke, noxious fumes, or fly ash in cities" and provided that "cities may provide the necessary rules for inspection, regulation, and control" thereof [§ 657.2 (11)].

II. Procedure

A civil action by ordinary proceedings to enjoin and abate a nuisance and to recover damages may be brought (§ 657.1).

III. Penalty

The penalty for maintaining a nuisance is a fine not to exceed $1000 or imprisonment not exceeding 1 year, and the court, with or without the fine, may order the nuisance abated (§ 657.3).

1/ Citations in this digest refer to the Iowa Code Annotated, 1950 edition and 1956 Supplement.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Kansas

I. General Statement

In 1907 Kansas enacted a statute enabling the State and local boards of health to investigate and control upon private property or watercourses nuisances, sources of filth and causes of sickness (§ 65-159).

II. Administrative Organization

The State board of health and the local boards of health have authority to examine into all nuisances, sources of filth and causes of sickness that in their opinion may be injurious to the health of the inhabitants within any county or municipality of the State (§ 65-159).

III. Procedure

If a nuisance is found on private property or watercourse the boards of health may order in writing the owner or occupant at his own expense to remove the nuisance within twenty-four hours or such reasonable time as the board may order (§ 65-159).

IV. Penalty

A. A fine of not less than $10 or more than $100 may be assessed upon conviction and each day's continuance of the nuisance is a separate offense (§ 65-159).

B. It is the duty of the county attorney to prosecute violations of the nuisance statute (§ 65-160).

1/ The citations refer to General Statutes of Kansas Annotated, 1949 edition.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Kentucky

I. General Statement

The Kentucky Air Pollution Control Act, enacted in 1952, establishes statewide standards for air pollution control with enforcement on a county basis at local option.

Air contaminant is defined to include "smoke, charred paper, dust, soot, grime, carbon, noxious acids, fumes, gases, odors, or particulate matter, or any combination thereof" [§ 77.055 (2)].

The statute creates in each county an air pollution control district (§ 77.010) and provides for air pollution control boards to be the governing bodies of such districts (§§ 77.065, 77.070, 77.115).

II. Administrative Organization

A. Establishment of county air pollution control districts

An air pollution control district is established in each county with boundaries coextensive with the county (§ 77.010).

B. Activation of districts

Air pollution control districts are authorized to function only after a resolution by the appropriate county fiscal court, and, in addition, in the case of a county containing a city of the first or second class, a municipal ordinance, declaring that there is a need for an air pollution control district to function in the county and the city respectively (§§ 77.015; 77.055 (4)).

The resolution and ordinance are authorized only if, from evidence received at separate public hearings as to which required public notice has been given (§§ 77.020, 77.025, 77.040) it is found there is need for a district to function because

1. The air within the county is so polluted with air contaminants as to be injurious to health, or an obstruction to the free use of property, or offensive to the senses of a considerable number of persons, so as to interfere with the comfortable enjoyment of life or property (§§ 77.030; 77.035).

2. It is not practical to rely upon the enactment or enforcement of local ordinances to prevent or control air pollution (§§ 77.030; 77.035).

1/ The citations in this digest refer to chapters and sections in the Kentucky Revised Statutes, 1955 edition, unless otherwise noted.

C. Governing body of district

An air pollution control board is the governing body of the air pollution control district (§ 77.115).

1. Organization and composition

a. The members of the fiscal court of a county are ex officio, the members of the air pollution control board and they and their personnel are to perform the same duties for the board as for the county (§ 77.065).

b. In a county containing a city of the first or second class the air pollution control board consists of 3 members appointed by the county judge, and 4 members appointed by the mayor of the city of the first or second class contained within the county (§ 77.070).

c. Persons interested in the sale of air pollution control equipment are ineligible for membership on the board or for employment by the board (§ 77.110).

d. Meetings of each board are held at least once each calendar month (§ 77.080).

e. In a county containing a city of the first or second class the air pollution control board, in July of each year, elects from its membership a chairman and a vice-chairman (§ 77.085).

f. A majority of the members of the board constitute a quorum for all purposes. The affirmative vote of at least a majority of the membership of the board is necessary for the adoption of any motion, measure, or resolution unless the bylaws of the board require a larger number (§ 77.080).

g. All air pollution control board members serve without compensation other than recovery of actual expenses from district funds (§ 77.075).

2. Duties and powers

a. In general, the district has the powers of a body corporate (§ 77.050--77.060).

b. The board may make and enforce all needful orders, rules, and regulations necessary or proper to accomplish the purposes of the statute (§ 77.180) after a public hearing of which the required public notice has been given (§ 77.185).

c. The board of a district containing a city of the first or second class is required to employ a secretary-treasurer and an air pollution control officer, neither of whom may be a member of the board, and may provide for them to employ various personnel (§ 77.085).

The board of a district not containing such a city may appoint an air pollution control officer and provide for him to employ other personnel (§ 77.090). The air pollution control officer is directed to enforce the Act and the rules and regulations of the board (§ 77.145). He and his assistants are given by statute rights of entry and inspection (§ 77.165), and the status of peace officers (§ 77.145).

d. The board may employ and remove professional and technical advisers, experts and other employees at its pleasure as it deems necessary (§ 77.095).

e. The board must require bond of the secretary-treasurer and air pollution control officer and may require it of other officers and employees (§ 77.100).

f. The air pollution control board appoints a hearing board of 3 members to serve, after the initial terms, for staggered terms of 3 years each (§ 77.105).

g. The air pollution control board may fix reasonable limits for particular air contaminants or other material which in their opinion may cause injury, detriment, nuisance, or annoyance to the public (§ 77.155).

h. The air pollution control board may by regulation require a permit before any equipment which may cause the issuance of air contaminants may be built, erected, altered, replaced, used or operated, and, as a condition of the permit may require use of approved equipment to reduce or eliminate air pollution. Four statutory exceptions to such requirements are:

1. mobile equipment
2. dwellings for less than 5 families
3. agricultural equipment
4. repairs or maintenance of approved equipment (§ 77.195).

i. The air pollution control board may contract with the county or any city within the district for assistance in regulation of installations which may issue air contaminants (§ 77.195).

D. Financing

1. In a county where the air pollution control district has been activated, the fiscal court and the legislative body of a city of the first or second class, if there is one, may annually appropriate funds to the district (§ 77.125). Provisions are also made for the preparation of budgets by the boards and for related fiscal procedures (§§ 77.130 - 77.140).

2. Fees

a. A schedule of permit fees may be established by the board to cover the cost of issuing permits and inspections (§ 77.205). These fees may be paid directly to a city when a contract for assistance has been made or into the district treasury (§ 77.210).

b. A schedule of fees, covering the cost of administering the variance provisions (§ 77.245 - 77.275) may be established. The fees are paid into the district treasury (§ 77.255).

E. Prohibited emission of air contaminants and operations exempted

1. Prohibited emissions

The discharge from any single source of emission of any air contaminant which is as dark or darker than Ringelmann No. 2 and of such opacity as to obscure an observer's view to a degree equal to or greater than Ringelman No. 2 for a period or periods aggregating more than 3 minutes in 1 hour is prohibited.

It is also prohibited to discharge such quantities of air contaminants or other material which cause injury, detriment, nuisance or annoyance to or which endanger the comfort, repose, health or safety of the public, or which cause or tend to cause injury to business or property (§ 77.155). (See also II C 2 g. of this digest.)

2. Exemptions

Exempted from the prohibition are buildings used exclusively for private residences and containing fewer than 5 dwelling units, equipment used for agricultural operations, and smoke from fires authorized by any public officer. Also exempted are air contaminants emitted when a fuel consuming device is being cleaned and a new fire being built therein, in which case smoke greater than the prohibited density is permitted for no longer than 6 minutes in every 60 minutes (§ 77.160).

III. Procedures

A. Composition and organization of hearing board

1. The hearing board of an air pollution control district consists of 3 members appointed by an air pollution control board (§ 77.105). It is required to select a chairman from its members (§ 77.285).

2. The board may hold a hearing en banc or may designate 1 or 2 of its members to hold a hearing (§ 77.285).

3. If 2 or 3 members conduct a hearing the concurrence of 2 is necessary for a decision (§ 77.285).

4. The board may issue subpoenas to be served as in a civil action (§77.290).

5. The board may require witnesses to be sworn (§ 77.300).

B. Permits--Suspension and revocation of permits

1. An air pollution control officer may suspend a permit if the permittee does not furnish him with required information and must serve on the permittee notice in writing of and the reasons for such suspension (§ 77.220). When the information is furnished, the permit is to be reinstated. The air pollution control officer may reinstate the permit when "good reasons" exist (§ 77.220).

2. Within 10 days after receipt of notice of suspension a permittee may file with the hearing board a demand for a public hearing (§ 77.220).

3. An air pollution control officer may request a public hearing regarding revocation or suspension of a permit (§ 77.225).

4. The hearing board must give 10 days' notice of the time and place of the public hearing to the permittee, to the air pollution control officer and to such other persons as the board deems should be notified (§ 77.225).

5. After public hearing the hearing board may continue the suspension of a permit, find that no violation exists and reinstate an existing permit, or remove the suspension pending furnishing by the permittee of the information required (§ 77.230).

C. Variances

1. The hearing board may permit variances (§ 77.245). At least 10 days' notice of the time and place of a hearing to grant a variance must be given to the air pollution control officer and to the applicant (§ 77.250).

2. After public hearing held after requisite notice the hearing board may revoke or modify any variance (§ 77.265).

3. Statutory standards for granting a variance are prescribed which include a finding that compliance will result in the closing of a lawful business without sufficient corresponding benefit in the reduction of pollution (§ 77.260).

D. Appeals

Appeal may be taken by a party to the hearing, including the air pollution control district, from the finding of the hearing board to the circuit court of the county in which the district is located and from the circuit court to the Court of Appeals of Kentucky (§ 77.035).

IV. Violations and Penalties

A. The making of false statements in applications, reports, etc.; the failure to supply required information; the failure to obtain required permits or operations contrary to permit, and failure to comply with regulations are included as violations of the statute (§ 77.255).

B. Violations of the statute are punishable by fine (§ 77.990) and may be enjoined (§§ 77.175; 77.240).

C. Subpoenas issued by a hearing board are enforced by contempt proceedings and attachment of the person. The same penalties and punishment may be imposed as in the case of a witness subpoenaed in a trial of a civil cause before a circuit court (§ 77.295).

V. Scope and construction

The statute does not pre-empt the field and does not prohibit the enactment or enforcement of any local ordinance stricter than therein provided (§ 77.170).

VI. Effective date

The effective date of this chapter is March 14, 1952.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Louisiana

If the works or materials for any manufactory or other operation, cause an inconvenience to those in the same or in the neighboring houses, by diffusing smoke or nauseous smell, and there be no servitude established by which they are regulated, their sufferance must be determined by the rules of the police, or the customs of the place (Art. 669).

The mayor and aldermen of cities and towns, but not of villages, have power to regulate the construction and building of chimneys, smokestacks and smoke and hot air flues [§ 33:402 (11)].

The mayor and board of aldermen of every municipality have power to secure the general health of the municipality and to prevent, remove and abate nuisances [§ 33:401(8)] and to regulate and order the cleaning of chimneys [§ 33:401 (10)].

The State Board of Health is required to prepare a sanitary code for the State, setting forth rules, regulations, and ordinances for the improvement of the hygienic and sanitary conditions of the State. It must contain general rules in regard to those public health, sanitary and hygienic subjects which cannot, in the opinion of the Board, be sufficiently regulated by the local boards (§ 40:11).

Local boards of health may pass strictly local health and sanitary ordinances and define and abate nuisances dangerous to the public health. They may regulate the carrying on of trade and business injurious to public health, the erection of buildings, and may provide for the vacation and demolition of buildings when necessary for the protection of public health. The rules and regulations of the local board may not conflict with those of the sanitary code or those of the State board of health (§ 40:35).

Smoke consumers or other necessary appliances competent to consume not less than 75 per centum of the smoke resulting from the burning of fuel used in providing motive power for a steam plant located within an incorporated city of 50,000 or more inhabitants must be provided. Violators of the provision are subject to a $25 fine or 30 days' imprisonment for each day the plant is operated without the required appliance (§ 40:1251).

1/ Citations in this digest refer to Louisiana Civil Code 1952 edition.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Maine

"The erection, continuance or use of any building or place for the exercise of a trade, employment or manufacture which, by noxious exhalations, offensive smells or other annoyances, becomes injurious and dangerous to the health, comfort or property of individuals, or to the public . . . (are) declared to be public nuisances (a)." (Chpt. 141, sec. 6).

"The local health officer shall receive and examine into the nature of complaints made by any of the inhabitants concerning nuisances dangerous to life and health within the limits of the jurisdiction; enter upon or within any place or premises where nuisances or conditions dangerous to health and life are known or believe to exist, and personally, or by appointed agents, inspect and examine the same; and all owners, agents and occupants shall permit such sanitary examinations; and every such health officer shall order the suppression and removal of nuisances and conditions detrimental to life and health found to exist within the limits of his jurisdiction (Chpt. 25, sec. 48)."

1/ Citations refer to Revised Statutes of Maine, Volume 4, 1954 edition.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Maryland

In 1950 Maryland enacted a statute authorizing and directing the Governor to include in the budget an item for appropriating $100,000 annually to the State Department of Health for the study and control of air pollution in Maryland. It further directed that not less than one-half of such appropriation be paid over to the Health Department of Baltimore City for use in the study and control of air pollution in and adjacent to the City of Baltimore. [2]

1/ Citations in this digest refer to Flack's Annotated Code of Maryland, 1951 edition.

2/ Article 43, section 116.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Massachusetts

I. General Statement

Under the 1954 air pollution control act the Massachusetts State Department of Health is charged with advising municipal authorities in regard to atmospheric pollution. Subject to the approval of the State department of health, the local board of health or other municipal legal authority authorized to control atmospheric pollution may adopt and enforce reasonable rules and regulations for the control of such pollution. The pollution to be controlled includes but is not limited to the emission of smoke, particulate matter, soot, cinders, ashes, toxic and radioactive substances, fumes, vapors, gases, industrial odors and dusts as may arise within the bounds of the municipality and which constitutes a nuisance or danger to the public health, or impairs the public comfort and convenience (§ 31 C).

II. Administrative Organization

A. A board of health or other legal authority constituted for such purpose by vote of the town or city council has jurisdiction to adopt and enforce rules and regulations to control atmospheric pollution subject to the approval of the State Department of Health (§ 31 C).

B. The State Department of Health may establish minimum rules and regulations to prevent pollution or contamination of the atmosphere within the commonwealth (§ 142 A).

C. Powers and duties

1. of the local control body (§ 31 C)

a. adopt and enforce reasonable rules and regulations.

b. after notice hold a public hearing before adoption of rules and regulations.

2. of the State board of health

a. establish minimum rules and regulations to prevent pollution or contamination of the atmosphere (§ 142 A).

b. approve rules and regulations promulgated by local control bodies (§ 31 C).

c. advise local control bodies in all matters of atmospheric pollution (§ 31 C).

d. upon request of a local control body and after a hearing of all interested parties assume joint jurisdiction to regulate or control the cause of atmospheric pollution arising in another town (§ 31 C).

1/ Citations in this digest refer to Annotated Laws of Massachusetts, Vol. 3 B, Chapter III, 1956 Supplement.

III. Violations and Penalties

A. The supreme judicial or superior court may enforce the rules and regulations established by the control Authority and restrain the use or occupation of premises until the rules and regulations have been complied with (§ 142 A).

B. Any municipality, corporation or person which, after due notice, continues to violate any rule or regulation regarding atmospheric pollution established by the control Authority is deemed guilty of a misdemeanor and upon conviction is subject to a fine of not less than $10 nor more than $50 for the first offense and not less than $20 nor more than $100 for every succeeding offense (§ 142 A).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Massachusetts

Supplement No. 1

Special Provisions for Smoke Abatement in City of Boston and vicinity.

I. General Statement

Chapter 651, Acts of 1910 as amended, establishes a smoke control district consisting of the City of Boston and cities and towns in the vicinity and establishes standards of smoke emissions for the district (§ 1).

The Division of Smoke Inspection, formerly in the Department of Public Utilities, was transferred to the State Department of Public Health by sec. 2, Chapter 672, Acts of 1954, where it continues, under the supervision of the Department of Public Health, to carry out its functions of prevention of smoke pollution in the Metropolitan Boston Smoke Inspection District.

II. Administrative Organization

A. Department of Public Health - Powers and Duties

The Department of Public Health is charged with the enforcement of the statute, and is directed to investigate all complaints, to issue orders requiring compliance with the act and to enforce such orders by legal proceedings. Provision is also made for administrative regulations, the maintenance of records and the making of annual reports (§ 4).

B. Personnel

The Department is directed to appoint a smoke inspector, deputies and necessary personnel, as well as to expend funds for salaries and other expenses. The smoke inspector and his assistants, under the supervision of the Department, assist in the enforcement of the act (§§ 3, 5).

C. Financing

Under the 1954 amendments to Chapter 651 (see general statement), the expenses of administering the provisions of this chapter are apportioned annually by the State treasurer among the cities and towns comprising the district to which the act applies, in proportion to their last annual taxable valuation, and added to their proportion of the State tax (§ 6, Chapter 672, Acts of 1954).

Administration funds are appropriated annually by the State legislature.

III. Prohibitions

Sources of smoke emission, defined as "stacks," are classified according to diameter, and whether they are fixed or on vessels. Locomotive stacks and stacks on locomotive engine houses are classified as such.

1/ Citations in this digest refer to Chapter 651, Acts of 1910, as amended.

Standards of emission, based on the Ringelmann chart, are established for the different classifications of stacks, ranging from 25 minutes in any one hour of smoke equal to No. 2, to 15 seconds in any five minutes of smoke equal to No. 3 or greater from locomotive stacks. Variations are permitted for locomotives hauling six or more cars, and when fires are being rebuilt (§ 2).

IV. Procedures

1. Hearing

A hearing may be held upon at least 48 hours written notice. After the hearing, an order directing offenders to stop or abate pollution in violation of the act may be issued.

2. Report of observation

In the event of violation, a report of the observation must be mailed to the operator within 24 hours and a copy delivered to the premises as soon as practicable (§ 6).

V. Variances

Temporary permits, for a period not exceeding six months, for the emission of smoke may be granted if the Department is satisfied that public convenience requires it (§ 8).

VI. Penalties

Violation of an order constitutes a misdemeanor punishable by fine of not less than $10 nor more than $50 for the first offense, and not less than $20 or more than $100 for succeeding offenses. The superior court has authority to enjoin violations during proceedings to enforce an order (§ 7).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Michigan

No specific authority relating to the control of air pollution by the State Health Department is provided (see sec. 14.1 et seq.).

Incorporated cities of the fourth class (population not exceeding 10,000) are authorized to prevent injury or annoyance from anything dangerous, offensive, or unhealthy, to prevent and abate nuisances, and to impose penalties on offenders (§ 5.1740 and § 5.1758).

Incorporated villages are authorized to abate nuisances and preserve the public health (§ 5.1285).

Local boards of health in townships are authorized to prevent all nuisances injurious to the health of township inhabitants (§ 14.68).

Cities incorporated under the Home Rule provisions of Michigan are given broad authority to provide for the public peace and health and for the safety of persons and property (§ 5.2073).1/

Under the Michigan Penal Code, sec. 28.652 provides:

"Any person who shall own, operate or have in his possession any motor vehicle equipped with a device for producing excessive smoke or gas, or so equipped as to permit oil or any other chemical to flow into or upon the exhaust pipe or muffler of such vehicle or in any other way to produce or emit smoke or dangerous or annoying gases from any portion of such vehicle other than the ordinary gases emitted by the exhaust of an internal combustion engine under normal operation, shall be guilty of a felony." 2/

1/ Michigan Statutes Annotated (1956 ed.).

2/ Michigan Statutes Annotated, Vol. 25, 1954 edition.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Minnesota

The council or other governing body of each city in the State which now has or hereafter may have 20,000 and not more than 50,000 inhabitants is authorized to enact and provide penalties for the violation of ordinances to regulate the emission of dense smoke in the city (§ 461.07).

Such ordinances may define the meaning of dense smoke and declare the emission thereof to be a public nuisance and provide effective steps for its abatement (§ 461.08).

Any city of the third class in the State, is authorized, acting through its council, to regulate the emission of dense smoke from the smokestack of any locomotive, engine, stationary engine, or building within the limits of such city and to declare such emission of dense smoke to be a public nuisance and to provide for its summary abatement and in addition may impose a penalty not to exceed a fine of $700 or 90 days imprisonment (§ 461.09).

1/ Citations in this digest refer to Minnesota Statutes Annotated, Vol. 26, 1947 edition.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Minnesota

1957 Supplement

Senate Bill No. 812, Laws 1957, amends Minnesota Statutes 1953, sec. 144.12, to authorize the State board of health to make regulations regarding atmospheric pollution which may be injurious or detrimental to public health. Such regulations have the force of law except insofar as they conflict with any statute or with the charter or ordinance of a city of the first class upon the subject. The board may require the taking out of licenses or permits to achieve its purpose of regulation. This statute became effective April 11, 1957.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Mississippi

"The governing authorities of municipalities have power to make all needful police regulations necessary for the preservation of good order and peace of the municipality and to prevent injury to, destruction of, or interference with public or private property; to regulate or prohibit any mill, laundry, or manufacturing plant from so operating whereby the soot, cinders or smoke therefrom . . . may do damage to or interference with the use or occupation of public or private property . . ." (§ 3374-124).

"The governing authorities of municipalities have the power to . . . regulate and prescribe the construction and building of chimneys, smokestacks and smoke and hot-air flues." (§ 3374-150)

1/ Citations refer to Mississippi Code 1942 Annotated, 1957 edition.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Missouri

I. General Statement

Missouri has several statutes regulating the emission of smoke. The emission or discharge into the open air of dense smoke within the corporate limits or any city of the State is declared to be a public nuisance (§ 71.760). There are special provisions relating to the emission of smoke near State-owned buildings (§ 564.050).

II. Administrative Organization

A. All cities to which sec. 71.760 applies are empowered to enact all necessary or desirable ordinances not inconsistent with the State constitution or statutes to carry out its provisions (§ 71.770).

B. Every city of the first class has power to control, regulate or prohibit the emission of dense smoke from the chimneys and chimney stacks of buildings, manufactories, locomotives or engines in any manner within the city (§ 74.145).

C. Every city of the second class has power to control, regulate and prohibit the emission of dense smoke from the chimneys and chimney stacks of buildings, manufactories, locomotives or engines in any manner within the city [§ 75.110(47)].

III. Violations and Penalties

A. Permitting the emission of dense smoke is a misdemeanor punishable, upon conviction in a court, by a fine of not less than $25 nor more than $100 (§ 71.760).

B. Each day of emissions constitutes a separate offense.

C. It is a good defense to show to the satisfaction of the jury that there is no known practicable means by which such emission of smoke could be prevented (Ibid).

IV. Smoke emission near State-owned buildings

A. It is prohibited to operate a factory or power plant where injurious smoke producing fuels are used in their boilers which emit smoke within 1500 feet or less of any State-owned building without equipping such boilers with a smoke preventive device (§ 564.050).

B. Operators of railroads must take reasonable precautions to prevent dense smoke emission from trains or roundhouses within 1500 feet of any State-owned building (Ibid).

C. Violation of sec. 564.050 constitutes a misdemeanor if within a reasonable time of receipt of written notice from the proper authority smoke preventive devices are not installed (§ 564.060).

D. Sections 564,050 and 564.060 do not repeal any existent State laws that give any cities the right to abate smoke nuisances within their limits (§ 564.070).

1/ Citations in this digest refer to Vernon's Missouri Statutes, Vol. 5, 1952 edition and Vol. 41, 1953 editions. (Sections 564.050 - 564.070 are found in Vol. 41)

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Montana

It is lawful for any county or incorporated city or town where injurious and unhealthy smoke and fumes exist, upon petition signed by at least 100 of the resident taxpayers of the county, city, or town, to make contracts with such persons or corporations as will, in the opinion of the board of county commissioners or city council best accomplish the purpose, for the abatement thereof and to issue and dispose of bonds for that purpose, subject to the limitations and conditions hereinafter provided (§§ 11-2501 and 11-2502).

An election, held upon proper notice, wherein the electors approve or disapprove the contract negotiated by the county, city or town and the bond issue necessary to carry it out is required (§§ 11-2504 and 11-2505).

1/ Citations in this digest refer to Revised Codes of Montana, Vol. 1, 1947 edition.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Nebraska

Cities having a population of 150,000 inhabitants or more have power by ordinance to provide for the abatement of dense volumes of smoke [§ 14-102 (33)].

1/ Citations in this digest refer to Revised Statutes of Nebraska, Vol. 1, 1954 edition.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Nevada

The Nevada statute authorized air pollution control by county governments and incorporated cities, and provides for cooperative agreements between them.

Within the boundaries of their counties and within the corporate limits of their cities the boards of county commissioners and the governing body of each incorporated city are granted "the power and authority, by ordinance regularly enacted, to regulate, control and prohibit, as a public nuisance, the excessive emission of dense smoke and air pollution caused by excessive soot, cinders, fly ash, dust, noxious acids, fumes and gases." 1/ (Chapters 244 and 268.)

The boards of county commissioners and the governing bodies of incorporated cities in the county are authorized to enter into cooperative agreements with each other for the joint use of county and city personnel, equipment and facilities, upon such terms and conditions and within such areas within the county as may be determined for the promotion and protection of the health of the inhabitants of the county and city through the regulation, control and prohibition of the excessive emission of dense smoke and air pollution. (Chapter 277)

This Act became effective March 18, 1957.

1/ Citations in this digest refer to the Nevada Revised Statutes.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

New Hampshire

New Hampshire provides for limited tax exemption (a percentage of the valuation of equipment effective in the control of air pollution) as determined by the Water Pollution Commission for "any treatment facility, device, appliance or installation (whether consisting of real or personal property or a combination of both) built, constructed or placed in operation by any person, firm or corporation in this State wholly or partly for the purpose of reducing, controlling, or eliminating any source of pollution" because of the "general public benefits resulting from the control of pollution in the surface waters or air of the State." 1/

1/ Section 149:5-a, New Hampshire Revised Statutes Annotated, 1955 Supplement.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

New Jersey

I. General Statement

The New Jersey "Air Pollution Control Act (1954)" created an Air Pollution Control Commission within the State Department of Health which was charged with the enforcement of regulations adopted by the commission for the purpose of controlling and prohibiting air pollution throughout the State (§ 26:2C-8-9). 1/

"Air Pollution" is defined as "the presence in the outdoor atmosphere of substances in quantities which are injurious to human, plant or animal life or to property or unreasonably interfere with the comfortable enjoyment of life and property throughout the State and in such territories of the State as shall be affected thereby and excludes all aspects of employer-employee relationship as to health and safety hazards." (§ 26:2C-2)

II. Administrative Organization

A. Air Pollution Control Commission

1. Composition and organization

The Commission consists of 9 members, 3 of whom serve ex officio and are the State Commissioner of Health, the Commissioner of Labor and Industry, and the Secretary of Agriculture or a member of their respective departments designated by them, one citizen of the State representing the general public and 5 members appointed by the Governor with the advice and consent of the Senate from persons nominated by the New Jersey Health Officers Association, the New Jersey State Chamber of Commerce, the New Jersey Society of Professional Engineers, Inc., the New Jersey Manufacturers Association, and the New Jersey Section of the American Industrial Hygiene Association (§ 26:2C-3). A chairman and vice-chairman are elected annually by the commission from its membership (§ 26:2C-6). The appointed members of the Board serve for four years on staggered terms (§ 26:2C-4). All members serve without compensation but are reimbursed for expenses incurred (§ 26:2C-5).

Five members of the commission constitute a quorum to transact its business, except that any action must be by at least a majority vote of the entire commission (§ 26:2C-6).

2. Powers and duties

a. Employees

The commission has power to employ such employees as it may deem necessary (§ 26:2C-7).

b. Codes, Rules, and Regulations

The commission has power to formulate and promulgate, amend and repeal codes and rules and regulations controlling and prohibiting air pollution throughout the State but only after public hearing held after 30 days' prior notice thereof by public advertisement of the date, time and place of such hearing at which opportunity to be heard by the commission has been given to the public. No such code, rule or regulation, amendment or repeal may be effective, until 60 days after its adoption (§ 26:2C-8).

1/ Citations in this digest refer to sections in Title 26, Chapter 2C, New Jersey Statutes Annotated, 1956 Pocket Part.

c. Hearings

Any hearing required by the Act to be held before the commission is held before 3 or more members of the commission designated by the chairman. Any member has power to subpoena witnesses, administer oaths and require the production of any relevant books or papers. Any information as to secret processes or methods of manufacture or production is not, insofar as practicable, to be disclosed in public hearing and is to be kept confidential (§ 26:2C-10).

d. County Air Pollution Control Associations

The commission is directed to organize a county air pollution control association in each county in which it determines that the establishment of such association is advisable to assist it in carrying out the purposes of the Act (§ 26:2C-11). The duty of each county association is to study air pollution problems of the county (§ 26:2C-12). Members of the association shall be residents of the county and are appointed by commission to serve without compensation.

e. Submission of Proposed Local Regulations to County Association

The commission is required to submit to the county air pollution control association of the county affected for discussion and report all codes, rules or regulations of strictly local application before they are adopted (§ 26:2C-13).

B. State Department of Health

1. Powers and Duties

The Department is directed to control air pollution in accordance with any code, rule or regulation promulgated by the commission and is empowered to:

a. Conduct and supervise research programs for the purpose of determining the causes, effects and hazards of air pollution.

b. Conduct and supervise State-wide programs of air pollution control education.

c. Require the registration of and the filing of reports by persons engaged in operations which may result in air pollution.

d. Enter and inspect any building or place, except private residences, to investigate an actual or suspected source of air pollution and to ascertain compliance with any code, rules and regulations of the commission.

e. Receive or initiate complaints of air pollution, hold hearings, and institute legal proceedings for the prevention of air pollution.

f. With the approval of the Governor, cooperate with, and receive money from the Federal Government, the State Government, or any county or municipal government or from private sources for the study and control of air pollution (§ 26:2C-9).

III. Procedures

A. In case any written complaint is filed with the department, or the department has cause to believe that any person is violating any code, rule or regulation promulgated by the commission, a prompt investigation is made and if a violation exists the department immediately endeavors to eliminate the source or cause of air pollution resulting from such violation by conference, conciliation and persuasion (§ 26:2C-14).

B. In case such negotiation fails to correct a violation within a reasonable time, the department is required to issue written notice and a copy of a complaint made oy or to it to the persons complained against to answer such charges at a hearing before the department (§ 26:2C-15).

C. The respondent to such complaint may file a written answer, may appear at the hearing in person or by representative, with or without counsel and submit testimony, or both. Testimony is under oath, but the parties are not bound by the strict rules of evidence (§ 26:2C-16).

D. Any hearing required by the act to be held before the department is held before the State Commissioner of Health, or a member of the department designated by him, who has power to subpoena witnesses and compel their attendance, administer oaths and require the production of any books or papers relating to any matter under investigation in any such hearing (§ 26:2C-17).

E. Review of any final decision or action by the department or of the validity of any code, rule or regulation promulgated by the commission shall be by procedure in lieu of prerogative writs (§ 26:2C-20).

IV. Violations and Penalties

A. If at the hearing the department determines that a violation is occurring, it shall fix a reasonable time during which the offender is required to take measures to prevent such violation and to give periodic progress reports. Any trade secrets revealed by such progress reports are to be kept confidential (§ 26:2C-18).

B. If preventive or corrective measures are not taken in accordance with the order of the department, the department may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent further violation of the code, rule or regulation. A penalty of $100 per week beginning with the 10th day after the expiration of the time fixed for the taking of preventive or corrective measures in the department's order may also be recovered (§ 26:2C-19).

V. Scope and Construction

This Act shall not impair any existing civil or criminal remedy for any wrongful action which is a violation of any code, rule or regulation of the commission nor supersede existing or future ordinances or regulations of any municipality or county or board of health not inconsistent with this act, nor shall it affect in any manner the powers, duties and functions vested in the State Department of Health by other provisions of law (§ 26:2C-21-23).

VI. This act became effective September 16, 1954. [§ 26:2C-1 (note)].

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

New Mexico

Incorporated cities and towns are authorized to declare what shall be a nuisance and to abate the same and to impose fines upon parties who may create, continue or suffer nuisances to exist (§ 14-21-30).

Incorporated villages are authorized to prevent the presence within their limits of anything dangerous, offensive, unhealthy or indecent and to cause any nuisances to be abated (§ 14-23-1).

It appears that through 1957 no action to abate air pollution has been taken under these statutes.

1/ Citations in this digest refer to New Mexico Statutes, 1953 edition and 1957 Supplement.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

New York

I. General Statement

In 1957 the State of New York created an Air Pollution Control Board within the State Department of Health for the purpose of controlling and abating existing and future air pollution in the interests of the public health and welfare [Title II, § 1268-1 (a); Title I, § 1266]. 1/ This legislation was enacted as Article XII-A of the Public Health Law.

"Air Pollution" is defined as "the presence in the outdoor atmosphere of one or more air contaminants in quantities, of characteristics and of a duration which are injurious to human, plant or animal life or to property or which unreasonably interfere with the comfortable enjoyment of life and property throughout the State or throughout such areas of the State as shall be affected thereby; excluding, however, all conditions subject to the requirements of the labor law and industrial code." (Title I, § 1267-4) "Air contaminant" is defined as "a dust, fume, gas, mist, odor, smoke, vapor, pollen or any combination thereof." (Title I, § 1267-3) "Air contamination" is defined in § 1267-5 as meaning "the presence in the outdoor atmosphere of one or more air contaminants which contribute or which are likely to contribute to a condition of air pollution."

II. Administrative Organization

A. Air Pollution Control Board

1. Composition and organization

The Air Pollution Control Board within the Department of Health is composed of the following nine members: The commissioners of the departments of health, agriculture and markets, commerce, conservation, and labor or a deputy or other representative of each department designated by the Commissioner, and four members appointed by the Governor with the advice and consent of the Senate, one of whom shall be a representative of the medical profession, one of the engineering profession, one of industry and one of the political subdivisions of the State (Title II, § 1268-1). The Commissioner of Health is Chairman of the Board (Title II, § 1269-1). The appointed members of the Board serve for four years on staggered terms (Title II, § 1269-1).

The Board must meet at least quarterly. Special meetings may be called by the Chairman and must be called by him upon receipt of written request signed by two or more board members (Title II, § 1272).

Six members constitute a quorum to exercise code, rule and regulation making responsibilities; to transact any other business, five members constitute a quorum (Title II, § 1272).

2. Technical, scientific, legal and other services

Technical, scientific, legal and other services shall be performed by departments or agencies of the State without additional compensation (Title II, § 1274).

1/ Citations in this digest refer to sections in Chapter 931, New York Laws 1957.

3. Employees and advisers

The Board shall have the power to employ and compensate such other personnel as it shall determine necessary to carry out the provisions of Article XII-A and shall prescribe their powers and duties (Title II, § 1275).

4. Codes, rules and regulations

A code, rule or regulation or any amendment or repeal thereof shall be approved in writing by at least six members of the Board and not by any deputy or representative (Title II, § 1276-1).

A code, rule or regulation or any amendment or repeal thereof shall not be adopted until after a public hearing within the area of the State concerned (Title II, § 1276-2).

5. Powers and duties

a. General authority

The Board is authorized to promulgate, amend, and repeal codes, rules and regulations for controlling or prohibiting air pollution in such areas of the State as shall or may be affected by air pollution and to include in such code, rules or regulations a general provision for controlling air contamination as the phrase "air contamination" is defined in § 1267-5 [Title II, § 1271-1 (a)].

b. Establishing areas and degree of air pollution

The Board has power to establish areas of the State and prescribe the degree of air pollution or contamination that may be permitted therein [Title II, § 1271-1 (b)].

c. Administrative powers

The Board shall have power to hold public hearings, conduct investigations, compel attendance of witnesses, receive such pertinent and relevant proof as it deems necessary, proper or desirable in order to effectively discharge its duties to control air pollution [Title II, § 1271-1 (c)].

d. Enforcement

The Board may do such things as it deems necessary, proper or desirable in order to enforce codes, rules or regulations promulgated under Article XII-A, including instituting court proceedings to compel compliance, settling, or compromising, or making, modifying or cancelling orders which require the abatement of air pollution [Title II, § 1271.2(h) (f) (g) (e)].

e. Inspection

The Board shall have the power to enter and inspect any property and to detain and inspect any motor vehicle for the purpose of investigating either an actual or suspected source of air pollution or ascertaining compliance with any code, rule or regulation which it may promulgate under Article XII-A (Title II, § 1271 (a)).

f. Plans

The Board shall develop a general comprehensive plan for the control or abatement of existing air pollution and for the control or prevention of any new air pollution [Title II, § 1271-4 (a)].

g. Cooperation with public and private agencies

The Board shall cooperate with the appropriate agencies of the United States or other States or interstate or international agencies with respect to the control of air pollution or for the formulation for submission to the legislature of interstate control agreements [Title II, § 1271-4 (d)].

h. Conduct of studies, investigations and research

The Board shall conduct studies and research with respect to air pollution control, conduct programs of air pollution control education, determine by field studies and samplings the degree of air pollution in New York State and develop demonstration programs in cooperation with local communities [Title II, § 1271-4 (e) (f) (g) (i)].

i. Training of personnel

The Board shall provide facilities and staff for training personnel of local communities in the principles of air sanitation [Title II, § 1271-4 (k)].

III. Procedures

A. If the Board shall have cause to believe that a violation of code, rule or regulation has occurred it shall initiate a prompt investigation. If such violation be found to exist the Board shall by conference, conciliation and persuasion try to eliminate the cause, but if this method shall fail, process shall be served in the same manner as a summons in a civil action or by registered mail (Title III, § 1279, 1280, - and 1278-2).

B. The Board is authorized to hold hearings, issue subpoenas requiring attendance and testimony of witnesses and the production of evidence relevant to matters involved at such hearings. In the case of refusal to obey a subpoena, the Supreme Court shall have jurisdiction to issue an order requiring obedience, and failure to comply with the order may be judged as contempt. Any information relating to secret processes, or methods of manufacture, or production which may be required, ascertained or discovered by the Board or those designated to conduct hearings shall not be disclosed in public hearings or otherwise and shall be kept confidential (Title III, § 1277-1 & 2, 1277-5, 1277-3).

C. Any final order or determination or other final action by the Board and the validity or reasonableness of any code, rule or regulation of the Board shall be subject to review as provided in Article 78 of the Civil Practice Act (Title III, § 1283-1).

Petition may be made for relief from any code, rule or regulation of the Board or from any determination, or order or other action which shall have been made or taken by the Board (Title III, § 1283-2 (b)).

IV. Violations and Penalties

A. If at a hearing the Board shall determine that the person against whom a complaint was made is violating any code, rule or regulation the Board shall fix a reasonable time during which such person shall take measures to prevent the violation (Title IV, § 1285).

B. For failure to take such required measures within the time fixed a penalty not to exceed $500 for the violation and not to exceed $100 for each day during which such violation continues may be imposed in a civil action (Title IV, § 1286-1).

C. For failure to take such required measures an action for an injunction must be brought by the Attorney General if the Board so requests (Title IV, § 1287).

V. Variances

A. The Board may suspend the enforcement of the whole or any part of any code, rule or regulation if it is shown that enforcement would be inequitable or unreasonable or a hardship (Title V, § 1289).

B. No variance shall be granted where the person applying therefor is causing air pollution which constitutes a health hazard (Title V, § 1291).

C. Any variance granted shall not be construed as to relieve the person who shall receive it from any liability imposed by other law for the commission or maintenance of a nuisance (Title V, § 1291).

VI. Scope and Construction

A. The provisions of Article XIX-A shall apply to all areas of the State (Title VI, § 1293).

B. The purpose of the article is to provide additional and cumulative remedies to prevent air pollution and not to abridge or alter rights of action or remedies now or hereafter existing (Title VI, § 1294).

C. Persons other than the State shall not acquire actionable rights by virtue of this article (Title VI, § 1295).

VII. Effective Date

The act is effective July 1, 1957, except that the provisions of Article 12-A of the Public Health Law, as added by this act, insofar as they confer power upon the air pollution control board to adopt and promulgate codes, rules and regulations for prohibiting and controlling air pollution and to enforce compliance therewith become effective July 1, 1959 (§ 2, Air Pollution Control Act).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

North Carolina

Smoke Control By Cities

All cities have the power to regulate the emission of smoke within the city but no regulation relative to the emission of smoke shall extend to the acts of an employee or servant of a railroad company in making necessary smoke when stoking or operating a coal-burning locomotive [§ 160-200 (32)].

Public Nuisance Provisions

The governing body of a city or town or officer who may be designated for the purpose by the governing body has power summarily to remove, abate, or remedy, or cause to be removed, abated or remedied everything in the city limits, or within a mile of such limits, which is dangerous or prejudicial to the public health; and the expense of such action shall be paid by the person in default, and if not paid, shall be a lien upon the land or premises where the trouble arose, and shall be collected as unpaid taxes (§ 160-234).

The board of commissioners of a town may pass laws for abating or preventing nuisances of any kind and for preserving the health of the citizens. Provided, however, it shall not be a nuisance for an employee or a servant of a railroad company to make necessary smoke when stoking or operating a coal-burning locomotive (§ 160-55).

Whenever and wherever a nuisance shall exist which in the opinion of the local health director is dangerous to the public health, it shall be his duty to notify in writing the person or persons responsible for its continuance, of the character of the nuisance and the means of abating it. The person or persons so notified shall proceed to abate the nuisance; provided that the person or persons so notified, within a reasonable time may appeal from the decision of the local health director to the local board of health. Upon receipt of notification of such appeal the local board of health shall grant a hearing, and if upon hearing of the matter, the local board of health finds that a nuisance does exist which is dangerous to the public health, then the person or persons responsible for the nuisance shall promptly proceed to abate it; provided that such person or persons may appeal from the decision of the local board of health to the superior court. If the person or persons responsible for the nuisance fails to abate it after notification by the local health director or after order to do so by the local board of health upon appeal to it or after order to do so by the superior court upon appeal to it, he shall be guilty of a misdemeanor.

Whenever and wherever a nuisance shall exist which is dangerous to the public health and such nuisance is of a character as to require in the interest of the public health immediate abatement or discontinuance the local health director may bring a proceeding in the superior court of the county in which the nuisance exists for the abatement of such nuisance and the superior court may upon hearing and for good cause shown enjoin the continuance of the condition creating the nuisance, irrespective of all other remedies at law (§ 130-20).

Injuries remediable by the old writ of nuisance are subjects of action as other injuries, and in such action there may be judgment for damages, or for the removal of the nuisance or both (§ 1-539).

1/ Citations in this digest refer to General Statutes of North Carolina, Vols. 3 C and 3 B, 1952 edition and Vol. 1 A 1953 edition.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

North Dakota

A nuisance is defined, inter alia, as unlawfully doing an act or omitting to perform a duty, which act or omission annoys, injures or endangers the comfort, repose, health or safety of others (§ 42-0101). The remedies against a public nuisance are (1) indictment, (2) filing an information, (3) bringing a criminal action before a justice of the peace who has authority to bind defendant over to the district court, (4) a civil action or, (5) abatement (§ 42-0107). The attorney-general, his assistant, the state's attorney, or any citizen of the county where a common nuisance exists or is maintained may bring an action in the name of the state to abate and perpetually enjoin the nuisance (§ 42-0201).

Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who wilfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor (§ 42-0115).

The remedies against a private nuisance are (1) a civil action or (2) abatement (§ 42-0103).

When it is necessary for the protection of the public health to abate or remove any nuisance, source of filth, or cause of sickness found on private property, the local board of health shall cause a notice to be served on the owner or occupant thereof requiring him to remove the same at his own expense within a reasonable time, not to exceed twenty-four hours. If the owner or occupant refuses or neglects to comply with such notice or if the nuisance, source of filth, or cause of sickness exists on the property of nonresident owners or upon property the owners of which cannot be found, the board of health shall cause the nuisance, source of filth, or cause of sickness to be removed or destroyed under its direction, at the expense of the county, city, village, or township, as the case may be, but such expense shall be charged against the lots, pieces, or parcels of land upon which the work was done (§ 23-0504).

Whenever a local board of health deems it necessary for the preservation of the public health to enter any building within its jurisdiction to examine, destroy, remove, or prevent any nuisance, source of filth, or cause of sickness and is refused entrance into such building, any member of the board may make complaint under oath to a justice of the peace within the jurisdiction of the board, stating the facts in the case so far as he has knowledge thereof. The justice thereupon shall issue a warrant directed to the sheriff or other peace officer commanding him to destroy, remove, or prevent between the hours of sunrise and sunset, the nuisance, source of filth or cause of sickness, under the direction of such members of the local board of health as accompany him (§ 23-0506).

1/ Citations in this digest refer to North Dakota Revised Code of 1943, 1953 Supplement and 1955 Session Laws.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Ohio

I. General Statement

By statute approved June 10, 1957 section 3701.75 was added to Chapter 370 (entitled "Department of Health") of the Ohio Revised Code relative to the conduct of air pollution research by the department of health and assisting political subdivisions in the abatement of air pollution (Preamble to Senate Bill No. 318, 1957 Regular Session).

> "Atmospheric pollution" is defined as "the presence, in the out-of-door atmosphere, of substances which are injurious to humans, crops, or animals." (§ 3701.75)

II. Administration

The duties and powers set forth in the statute are assigned to the director of health (§ 3701-75).

III. Powers and duties

The director of health is required to:

A. Maintain a laboratory to provide services necessary for the furtherance of air pollution abatement.

B. Develop methods of study of atmospheric pollution and conduct research within the state.

C. Advise, consult, and cooperate with other agencies of the state, the federal government, other states, interstate agencies, political subdivisions, and industries in furtherance of atmospheric pollution prevention and abatement.

D. Encourage, participate in, or conduct studies and research relating to the prevention of atmospheric pollution.

E. Collect and disseminate information relating to atmospheric pollution and the prevention, control, and abatement thereof.

F. Accept and administer grants from the federal government or other sources, public or private, for carrying out any of these functions. (§ 3701.75).

1/ Citations in this digest unless otherwise indicated refer to the Ohio Revised Code.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Oklahoma

General Statement

Oklahoma does not have a general air pollution control statute nor has it enacted specific enabling legislation in the field. Local activity would therefore have to rely on public nuisance provisions.

Public Nuisance Provisions

Section 4 provides that the State Board of Health has the duty to take proceedings to have abated a nuisance calculated to affect injuriously the health of the public or any community.

"If any board of health or any county or city superintendent of public health in this State shall order the owner or occupant of any private premises, at his own expense, to remove any nuisance, source of filth, or cause of sickness found there, within twenty-four hours, or within such other time as it shall be considered reasonable, and such owner or occupant refuses and neglects to comply with such order, he shall be fined therefor not more than twenty-five dollars for every day he knowingly violates such order. Such order shall be in writing and may be served personally on the owner, occupant or his authorized agent, by any person authorized to serve civil process, or a copy of the order may be left at the last usual place of abode of the owner, occupant, or agent if he is known, and within the State. If the premises are unoccupied and the residence of the owner or agent is unknown, or is without the State, the board or county or city superintendent of public health may order the notice to be served by posting it on the premises and by advertising it in one or more newspapers (§ 25)."

"If any person is convicted on an indictment or information for a common nuisance to the public health, the court may order the nuisance to be removed, or destroyed, at the expense of the defendant, under the direction of the State, city, township or town board of health (§ 26)."

Title 21, Chapter 48, part V entitled "Crimes Against Public Health and Safety" provides:

> "Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who wilfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor (§ 1191.)"

1/ Citations in this digest refer to Oklahoma Statutes Annotated, Title 63, 1949 edition and Title 21, 1937 edition and 1957 Supplements.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Oregon [1]

I. General Statement

In 1959, Oregon combined the control of water and air pollution in one agency. [2] It declared the public policy of the State of Oregon to preserve the natural purity of the air to the end that the least possible injury be done to human, plant or animal life, or to property [§ 449.005 (1) (a)]. To this end Chapter 449 of Oregon Revised Statutes, dealing with this subject, is to be liberally construed [§ 449.005 (2)].

The "discharge into the air of solids, liquids or gases so as to cause such injury to human, plant or animal life, or to property as constitutes a public nuisance is contrary to the public policy of the State." [§ 449.010 (2)].

Prior to 1959 control of air pollution was the responsibility of a separate "Air Pollution Authority" within the State Board of Health. This Authority was abolished by Chapter 357, Laws of 1959, and air and water pollution control responsibilities placed in the Sanitary Authority. Rules and regulations issued by the "Air Pollution Authority" are continued in force until superseded or repealed. The Sanitary Authority is substituted for the Air Pollution Authority in cases pending on the enactment of the Act (§§ 13 and 14).

II. Administrative Organization

A. Sanitary Authority - Membership

The Sanitary Authority is a division within the State Board of Health. It is composed of 6 members, the State Health Officer, the State Engineer, the Chairman of the State Fish Commission and 3 members appointed by the Governor (§ 449.015) for a term of 4 years (§ 449.020). The Secretary of the Authority is the State Sanitary Engineer (§ 449.025).

B. Duties and Powers

The Sanitary Authority shall: (§§449.030, .035, .045)

1. Encourage voluntary cooperation in restoring and preserving purity of air.

2. Formulate rules and regulations relating to prevention and control of air pollution.

3. Conduct research, investigations and programs on air pollution.

4. Enforce compliance with State laws relating to air pollution.

5. Require any person to submit plans for the removal of air contaminants.

6. Advise, consult, cooperate with and receive funds from other interested bodies, Federal, State, local and private.

7. Represent the State in plans and proceedings of interstate compacts relating to control of air pollution, and in determining priority of air pollution control projects under Acts of Congress. (§ 449.045).

1/ Citations are to Oregon Revised Statutes, Chapter 449, as amended by Chapter 357, Laws of 1959, and to sections of that chapter which amended ORS 449.005, 449.010, 449.020, 449.030, 449.035, 449.045, 449.050, 449.060, 449.065.

2/ Provisions dealing with water pollution are not included in this digest.

8. Employ necessary personnel and enter into contracts to carry out the purposes of the Act.

III. Enforcement Procedures

A. The Authority, on determination that a person has or may be violating any of its orders, or any of the provisions of Chapter 449, or upon receipt of any complaint involving air pollution, or upon a report by the Sanitary Engineer, may:

1. Investigate and take appropriate action. For this purpose its representatives may enter any property except private dwellings [§ 7 (1) (2)].

2. Conduct hearings in accordance with the Oregon Administrative Procedure Act (Oregon Revised Statutes, Chapter 183) [§ 7(3)].

3. Publish its findings and recommendations relative to public policies and procedures found necessary to correct conditions of pollution or violation of law [§ 7 (4)].

4. Take action to enforce its rules, regulations and orders [§ 7 (5)].

B. Conduct of Hearings

1. The Sanitary Authority or a hearing officer acting for it:

a. May issue subpoenas for witnesses and papers.

b. Shall administer oaths and shall take or cause to be taken necessary depositions.

c. Pay witness fees (§ 8).

2. Upon the conclusion of a hearing the hearing officer shall transmit the record of his hearing, together with his findings and conclusions, to the Sanitary Authority, which shall review the record and enter its order thereon. Such order shall be conclusive unless an appeal is taken (§ 9).

3. The Sanitary Authority may institute court proceedings to abate public nuisances caused by pollution. The Attorney General and District and City Attorneys of places affected by the pollution may do the same (§ 449.050).

C. Appeals from decisions of the Sanitary Authority may be taken in accordance with the Oregon Administrative Procedure Act (ORS 183.480 - § 449.065).

III. Miscellaneous

A. Intervention in abatement proceedings

The Sanitary Authority may intervene in suits by others to abate a nuisance arising from air pollution if the enforcement of any restraining order obtained in such suit may interfere with the normal industrial processes of any business so as to damage such operation in order that it may present facts obtained by it and urge that the mandate of the court not be made permanent until the defendant has been given an opportunity to remedy and correct the conditions complained of.

B. Violations and Penalties

Violation of rules and regulations of the Sanitary Authority (II B 2 supra) and orders issued by it (III A 4, supra) are made misdemeanors (§§ 449.990 (15) and 16), as amended by Section 5, Chapter 192, Oregon Laws of 1957).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Pennsylvania

I. General Statement

Pennsylvania has no comprehensive air pollution control statute, but does have legislation authorizing the control of the production and emission of smoke by first class townships, second and third class cities, and by boroughs.

II. Administrative Organization

A. The board of township commissioners of a township of the first class has power to regulate the emission of smoke from chimneys, smokestacks and other sources except locomotive smokestacks (§§ 56502 and 56529.

B. Cities of the second and third class may by ordinance regulate the production or emission of smoke (§§ 23164 and 37403).

1. Cities of the second class may regulate by ordinance the production or emission of smoke from any source (§ 23164).

2. Cities of the third class may by ordinance: (§ 37403)

a. regulate the construction and inspection of fireplaces, chimneys, stoves, stovepipes, ovens, boilers, kettles, forges or any apparatus used in any building, factory, or business.

b. order the suppression or cleaning of the devices listed in a. above

c. regulate the production and emission of smoke or fly ash from any source except from railroad locomotives.

C. The corporate officers of a borough have power to regulate the emission of smoke from chimneys, smokestacks, and other sources, except from locomotive smokestacks (§§ 46202 and 46251).

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[1] Citations in this digest refer to Purdon's Pennsylvania Statutes Annotated, Title 53, 1957 edition.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Pennsylvania

Supplement

The board of commissioners of a county of the second class is authorized to regulate by resolution or ordinance the emission of smoke from any chimney, smokestack or other source within the county. The regulations may provide for collection of fees and for fines and penalties. That the board may provide by regulation for permits is implied by the authorization of the collection of fees therefor (§ 5195).

The board may borrow, appropriate and expend money, may appoint enforcement officers and authorize the employment of other personnel and may acquire property, all for the purpose of regulating the emission of smoke (§ 5196).

Violation of a resolution or ordinance constitutes a misdemeanor punishable by a fine not to exceed $100 and as prescribed by the resolution or ordinance. In default of payment the violator is to be imprisoned for a period not to exceed 30 days (§ 5197).

The board may determine the effective date of any resolution or ordinance and in so doing shall take into consideration the availability of fuel burning devices suitable for burning high volatile bituminous coal smokelessly (§ 5195).

1/ Citations refer to Purdon's Pennsylvania Statutes Annotated, Title 16, 1956 edition and 1957 Supplement.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Puerto Rico

Anything which is injurious to the health, or indecent, or offensive to the senses or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action. Such action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance, and by the judgment the nuisance may be enjoined or abated, as well as damages recovered (§ 32:2761).

Anything which is injurious to health, or is indecent or offensive to the senses or is an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood or by any considerable number of persons is a public nuisance. The emission of smoke from useful manufacturing enterprises except in municipalities of Class I is not a public nuisance unless it is shown by proof in court that the health of a considerable number of persons is injuriously affected thereby. But nothing in the Act prohibits the council of any municipality from passing ordinances to require manufacturing enterprises to use devices to prevent the unnecessary emission of smoke, cinders and soot to the injury and prejudice of the inhabitants in cities and towns (§ 33:1365 - Penal Code).

A person who maintains or commits a nuisance or refuses to perform any legal duty relating to the removal of a public nuisance is guilty of a misdemeanor (§ 33:1366- Penal Code).

A person who violates the terms of a proclamation in relation to the public health issued by the Governor or who violates any regulations issued by the Secretary of Health is guilty of a misdemeanor (§ 33:1392 - Penal Code).

1/ Citations in this digest refer to Laws of Puerto Rico Annotated - 1956 edition.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Rhode Island

I. General Statement

The statute provides for three methods of smoke abatement: (1) compliance with statutory definition of smoke as a nuisance; (2) adoption by a city council of certain statutory provisions including a specified maximum density of smoke permitted; (3) grant of power to a city to regulate pollution by ordinance, in accordance with the statute. The only compulsory control appears to be that imposed by statute on cities having a population of 150,000 or over.

II. Administrative Organization

A. Cities of 150,000 population or more

1. Defined as a public nuisance is "the issue or emission of dense or thick black or gray smoke from any smokestack or chimney used in connection with an engine, steamboiler, or furnace of any description for a longer period than five (5) minutes at any one (1) time within such city." This does not apply to chimneys of buildings used exclusively for private residences or to locomotives during the time of starting or feeding fires while in roundhouses or roundhouse yards (§ 23-25-1).

2. Those who have the right to control the sources of smoke emission and permit such emission declared a nuisance are guilty of operating a public nuisance (§ 23-25-2), and subject to a fine of from $10 to $100 for each offense and each day constitutes a separate offense (§ 23-25-3).

3. The city council may appoint a supervising engineer to inspect and supervise sources of smoke. He may enter buildings for such purpose and anyone who hinders his entrance is subject to a fine of $20 to $50 for each offense (§ 23-25-4).

B. Cities of 20,000 population or over

1. Such cities may adopt statutory section 23-25-6 to 23-25-20 (§§ 23-25-5 and 23-25-7).

2. Smoke inspector

a. Such city must elect a smoke inspector (§ 23-25-7) who is a mechanical engineer or qualified by three years practical experience (§ 23-25-8).

b. Powers and duties

(1) May inspect sources of smoke (§ 23-25-8)

(2) May enter buildings in the daytime to perform inspection duties (§ 23-25-9).

1/ Citations refer to General Laws of Rhode Island, 1956, Title 23, Chapter 25.

(3) Charged with enforcement of statute (§ 23-25-11).

(4) Required to show records to city council (§ 23-25-11).

(5) Must give notice to statutory violators (§ -23-25-12)

3. Maximum density of smoke

In cities to which §§ 23-25-5 to 23-25-20 apply the emission of smoke of a degree of darkness or density equal to or greater than that of Ringelmann No. 3 from any stack, except stacks of locomotives, for any period or periods in the aggregate exceeding 6 minutes in any one hour, or from any stack of a locomotive for any period or periods in the aggregate exceeding 1 minute, in any period of 5 minutes is a public nuisance and prohibited; except that between 5 a.m. and 7 a.m., while any fire is being built or rebuilt after cleaning, including cleaning in any foundry cupola or a locomotive while resting in a roundhouse or roundhouse yard, the emission of smoke of such darkness therefrom, by means of any stack connected therewith, for any period or periods in the aggregate not exceeding 15 minutes in any 1 hour, is permitted; and the emission of smoke of such darkness from the stack of any locomotive which unexpectedly stopped by breakdown, signal or sudden emergency for a period not exceeding 3 minutes is permitted (§ 23-25-14).

4. Permits

a. A permit must be secured from the smoke inspector before a new plant or reconstruction of an existing building for producing power and heat may be constructed (§ 23-25-16).

b. Upon issuance of a permit the smoke inspector must notify the building inspector (§ 23-25-18).

c. The possession of a permit does not exempt the holder from prosecution on account of the emission of smoke in violation of the provisions of this statute (§ 23-25-20).

5. Violations and Penalties

a. Fines from $20 to $50 may be imposed for hindering a smoke inspector from entering a building to perform his duties (§ 23-25-9).

b. When, after giving proper notice to a violator, no bona fide effort has been made within 30 days of the notice to overcome the violation and within 6 months compliance has not resulted the smoke inspector is required to report the facts to the proper office for prosecution (§ 23-25-13).

c. A violation of the statutory maximum standard of smoke emission (§ 23-25-14) is subject to a fine of from $10 to $100 for each offense, each day constituting a separate offense (§ 23-25-15).

d. For construction in violation of the statute and without a permit a fine not exceeding $25 per day may be levied and prosecution of the work may be enjoined (§ 23-25-19).

6. Adoption of §§ 23-25-6 to 23-25-20 supersedes the application to such city of §§ 23-25-1 to 23-25-4.

C. City or town of any size

1. A city or town of any size may, in accordance with §§ 23-25-22 to 23-25-27, regulate by ordinance air pollution within its boundaries (§§ 23-25-21).

2. The ordinance (a) must define the extent of air pollution prohibited; (b) may establish exemptions as to source, as to permitted periods of discharge of smoke, or other substances (§ 23-25-3); (c) may provide for rights of entry for inspection and (d) may require permits for construction or alteration of fuel consuming equipment (§ 23-25-24); (e) may provide for fines up to $100 for each violation(§ 23-25-25); (f) may provide for the adoption of rules and regulations by an officer having the duty of smoke inspector (§ 23-25-26).

3. Acceptance by a city or town of §§ 23-25-22 to 23-25-27 supersedes the application of §§ 23-25-1 to 23-25-20 to such city or town (§ 23-25-27).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

South Carolina

In counties which have cities of 65,000 inhabitants or more it is unlawful for any manufacturer of acids or other distillations of a corrosive nature or of acrid odor, offensive or dangerous to human or plant life, to discharge into the air fumes from such manufacture without first treating such fumes to render them innocuous, inoffensive and harmless to human or plant life (§ 32-1851).

A violation of the provision is a misdemeanor and upon conviction punishment is in the discretion of the court (§ 32-1851).

The limit of liability in civil actions based on such violation is actual damages sustained by the plaintiff (§ 32-1852).

1/ The citations in this digest refer to Code of Laws of South Carolina, 1952, Volume 3, Title 32.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

South Dakota

Section 58.0201 provides:

"Each organized township in the State is a body corporate and has power:

* * *

"(6) When unincorporated town is within its limits:

* * *

"(4) To abate any nuisance found, within its corporate limits."

Section 45.0201 provides:

"Every municipality shall have power:

* * *

"(34) To declare what shall constitute a nuisance and prevent, abate, and remove the same.

"(35) To do what may be necessary or expedient for the promotion of health or the suppression of disease."

* * *

Section 27.2102 provides:

"The township board of health may examine into all nuisances . . . and causes of sickness within the township. Such board may make such rules or regulations respecting the same as it may judge necessary for the public health and safety of the inhabitants."

1/ Citations in this digest refer to South Dakota Code of 1939, and Annotations through February 17, 1956.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Tennessee

I. General Statement

The 1959 "Air Pollution Control Act" authorized the establishment of an Air Pollution Control Service and defines air pollution as "the presence of materials, be it gaseous, liquid or solid, or a combination thereof, or physical conditions or phenomena in the atmosphere outside the confines of building and structures in such a manner or concentration as to create a nuisance, or to have detrimental effect on health, or on property and its utilization, but shall not include any aspects of employer-employee relationships." [§ 2 (b)]

II. Administrative Organization

A. The State Department of Public Health is authorized to create an Air Pollution Control Service to administer the Act (§ 3).

B. The Commissioner of Public Health is authorized to employ necessary personnel and to expend funds appropriated for the purposes of this Act, Federal grants-in-aid, and gifts made specifically for this purpose (§ 3).

C. The Service is authorized to: (§ 4)

1. Advise, consult and cooperate with other State agencies, political subdivisions, industries, the Federal Government and other interested groups on matters relating to air pollution.

2. Collect and disseminate information relating to air pollution.

3. Encourage and conduct studies, investigations and research on air pollution.

4. Encourage local agencies to handle air pollution problems to the best of their abilities.

5. Provide technical assistance and cooperation to local and regional control programs.

D. The Act authorizes entry to inspect all buildings, except those used exclusively for human habitation, and obstruction of such entry is a violation of the Act. The Act also authorizes a requirement that persons engaged in operations that may result in air pollution supply information as to the composition of the effluent, source of emission and rate of discharge. However, secret processes, formulae and methods may not be required (§ 5).

1/ Chapter 270, Public Acts of 1959. References are to sections of this Act.

E. Local political subdivisions are authorized to enter into contracts for joint operation for the control of air pollution within their jurisdiction (§ 7).

F. This Act does not supersede ordinances or regulations of municipalities or counties nor keep them from adopting new ordinances or regulations consistent with this Act (§ 6).

III. Miscellaneous

Municipal corporations have full authority to prevent and remove nuisances. 2/

2/ Title 6, Section 302 (2), Tennessee Code Annotated, 1959 edition.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Texas

Article 695 provides:

"Whoever shall carry on any trade, business or occupation injurious to the health of those who reside in the vicinity, or suffer any substance which has that effect to remain on premises in his possession, shall be fined not less than ten nor more than one hundred dollars. Each day is a separate offense." (Penal Code)

Article 1072 provides:

"The city council may take such measures as they may deem effectual . . . to abate all nuisances of every description which are or may become injurious to the public health, in any manner that they deem expedient; and from time to time to do all acts, which they deem expedient; to preserve health and suppress disease in the city." (Vol. 2a)

Article 1015 provides:

"The governing body (of a city, town or village) shall also have power:

* * *

"(1) To abate and remove nuisances and to punish the authors thereof by fine, and to define and declare what shall be nuisances and authorize and direct the summary abatement thereof; and to abate all nuisances which may injure or affect the public health or comfort in any manner they may deem expedient."

Article 1146 provides:

"The board of aldermen (of towns and villages) shall:

* * *

"(4) Prevent as far as practicable, any nuisances within the limits of the corporation, and cause such as exist to be removed at the expense of the person by whom they were occasioned or upon whose property they may be found."

Article 1175 provides:

"Cities adopting the charter or amendment hereunder shall have full power of local self-government and among the other powers that may be exercised by any such city the following are hereby enumerated for greater certainty:

* * *

"(19) Each city shall have the power to define all nuisances and prohibit the same within the city and outside the city limits for a distance of five thousand feet . . .

* * *

"(24) To enforce all ordinances necessary to protect health, life and property and to prevent and summarily abate and remove all nuisances . . ." (Vol. 2a)

1/ Citations in this digest refer to Vernon's Texas Statutes Vol 2a, 1953 edition; and Vol. 13, 1951 edition and Vol 2, Vernon's Penal Code of the State of Texas Annotated.

Article 4421 provides:

"The members of said (State) Board of Health and its officers are severally authorized to administer oaths and to summon witnesses and compel their attendance in all matters proper for said board to investigate, such as the determination of nuisances . . . The several district judges and courts are hereby charged with the duty of aiding said board in its investigations and in compelling due observance of the provisions of this (health boards and laws) chapter." Punishment by the district court for contempt of the lawful authority of the board is provided. (Vol. 13)

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Utah

Section 10-8-60 provides:

"They (all cities) may declare what shall be a nuisance, and abate the same, and impose fines upon persons who may create, continue or suffer nuisances to exist."

Section 26-5-5 provides:

"Each local board of health shall cause every nuisance dangerous to health or human life to be abated. When complaint of such nuisance is made to it, it shall forthwith cause the matter to be investigated and shall determine whether or not the alleged nuisance is detrimental to the public health or the cause of any disease or mortality.

"Whenever a local board of health shall determine that a nuisance detrimental to health exists it shall in writing notify the occupant of the premises where the same may be found or, if unoccupied, the owner or agent thereof of such finding and shall order the abatement or removal of such nuisance within two days. If such nuisance is not abated or removed pursuant to such order, the board may summarily proceed to abate or remove the same, or it may cause an action to be brought in the name of the State by the county attorney for the abatement of such nuisance."

Section 76-43-1 provides:

"Whatever is dangerous to human life or health, and whatever renders . . . air . . . impure or unwholesome are declared to be nuisances and to be illegal, and every person, either owner, agent or occupant, having aided in creating or contributing to the same, or who may support, continue or retain any of them, is guilty of a misdemeanor."

Under this section the right to recover damages for injuries occasioned by fumes, gases, dust, smoke, foul air, and obnoxious odors, being cast upon one's property by another, in proper cases, is well established. But the rule of liability is not absolute and the law does not afford redress for every such discomfort or annoyance. Extreme rights in this regard cannot be enforced. An oil refinery reasonably operated in a location suitable therefor is not liable for inconvenience resulting to householder in neighborhood because of disagreeable odors.

1/ Citations in this digest refer to Utah Code Annotated, 1953 edition and 1957 Supplement.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Utah

Supplement No. 1

Under section 26-15-4 (12) of the Public Health Code, the State Department of Health is authorized to establish and maintain chemical laboratory and engineering facilities to meet the needs for conducting field investigations and laboratory analyses in the study of occupational health hazards and air pollution.

1/ Citation in this digest refers to Utah Code Annotated (1953), 1957 Supplement.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Vermont

Section 7250 provides:

"In its discretion the (State) board (of health) may exercise all the powers and authority in each town and village, which is given to a local board of health. The secretary may likewise exercise all the power and authority of a local health officer throughout the State."

Section 7283 provides:

"The (local) health officer shall make sanitary inspections when and where he has reason to suspect that anything exists which may be detrimental to the public health. He may enter any house or other building or place for the purpose of making such inspections. By written order he shall direct the destruction or removal within a specified time of nuisances, sources of filth, or sickness . . ."

Section 7286 provides:

"A person who neglects or refuses to comply with a written order of a local board of health or health officer issued under this chapter, when no other penalty is provided, shall be fined not more than $100.00 nor less than $5.00. Upon such neglect or refusal, the local board of health may prevent, remove or destroy any nuisance, sources of filth or causes of sickness, at the expense of the town it represents, and such expense may be recovered of the person whose legal duty it was to comply with such order."

Section 7287 provides:

"A local board of health shall have power and authority to abate nuisances affecting the public health, destroy, prevent or remove sources of filth and causes of sickness . .."

Section 7291 provides:

"A health officer shall not order the abatement of nuisances . . . except with the consent and approval of the selectmen of such town or the city council of such city . . ."

1/ Citations in this digest refer to Vermont Statutes, 1947 edition.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Virginia

Section 48-1 provides:

"When complaint is made to the circuit court of any county, or the corporation court of any city of this State, by five or more citizens of any county, city or town, setting forth the existence of a public or common nuisance, the court, or the judge thereof in vacation, shall summon a special grand jury, in the mode provided by law, to the next term of such court, to specially investigate such complaint." (Vol. 7)

Section 48-2 provides:

"If upon a full investigation of the complaint mentioned in the preceding section the grand jury is satisfied that the nuisance complained of is of a public nature, it shall proceed to make presentment against such person or persons as they may find have created or caused such nuisance." (Vol. 7)

Section 48-3 provides:

"If any such nuisance be upon premises the owner of which did not create or cause such nuisance, but permitted its continuation, such owner shall, for the purposes of this chapter, be deemed responsible for such nuisance, and if such owner be not a resident or citizen of this State, or one whose residence is not known, such presentment shall be against the premises upon which such nuisance is." (Vol. 7)

Section 48-4 provides:

"Upon any such presentment the court shall order a copy thereof to be served upon the person or persons presented, or whose property is presented, in the manner prescribed by law as to the service of notices. To any such proceeding, if it be in rem, any person interested, or for and in behalf of the owner of such premises, may make defense." (Vol. 7)

Section 48-5 provides:

"Upon the trial of any such presentment the person or persons who have created, caused or permitted the continuation of such nuisance, if found guilty, shall be fined, in the discretion of the jury, not more than five thousand dollars; and upon such verdict the judgment of the court shall be for the amount of fine imposed and the costs of such proceeding, and also that such nuisance be forthwith removed and abated." (Vol. 7)

Section 48-6 provides:

"Every judgment in rem under this chapter shall be enforced in the same manner as an attachment levied on real estate." (Vol. 7)

1/ Citations in this digest refer to Code of Virginia, Vol. 7, 1949 edition, Vol. 3, 1956 edition, Vol. 5, 1949 edition.

Section 15-6 provides:

"Every city and town may:

* * *

"(5) Prevent injury or annoyance from anything dangerous, offensive or unhealthy and cause any nuisance to be abated . . .

"The (State) Board (of Health) may make separate orders and rules to meet any emergency, not provided for by general rules and regulations, for the purpose of suppressing nuisances dangerous to the public . . ." (Vol. 3)

Section 32-44 provides:

"Every . . . (local) health officer, or secretary acting as such health officer, shall have power to enter and inspect both public and private premises where he has reason to suppose any nuisance . . . exists, when the protection of the public health demands it." (Vol. 5)

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Virgin Islands

The Department of Health is required to conduct a program in environmental sanitation, to exercise general control over the enforcement of laws and regulations relating to the health of the people of the Virgin Islands, to maintain public health standards which it deems necessary, to prolong the life span of the people, and to recommend rules and regulations governing preventive programs (§ 3:418).

A public nuisance is defined as anything which is injurious to health, indecent, offensive to the senses or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by a considerable number of persons. Maintaining a public nuisance or failure to remove such when legally required to do so is punishable by a fine not exceeding $200, or imprisonment for not more than 1 year, or both (§§ 14:1461 and 1462).

1/ Citations in this digest refer to Virgin Islands Code Annotated, 1957 edition.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Washington

I. General Statement

A. The Washington Air Pollution Control Act of 1957 states that "It is necessary to the health, safety, and welfare of the people of the State to provide means for control and prevention of air pollution" and declares the public policy of the State "to maintain the highest practical standards of purity of the air in order to promote public enjoyment of the State's natural scenic and outdoor recreational resources, to foster and develop public health, and to facilitate the growth of desirable natural and agricultural plant and animal life, all consistent with maximum enjoyment and full industrial development of the State." (§ 1)

The Act recognizes that problems of air pollution control and prevention are regional in nature and declares it the purpose of the chapter to "provide for creation of separate districts to control and prevent air pollution in each area where it may exist or is likely to occur." (§ 2)

B. "Air pollution" is defined as "the presence in the outdoor atmosphere of substances put there by man in concentration sufficient to cause an unreasonable interference with the comfort, safety, or health of man; or the reasonable use and enjoyment of his property." (§ 3)

C. The Act provides that, except where specified in a variance permit, it is unlawful for any person knowingly to cause or permit to be caused air pollution in violation of its provisions or of provisions of any ordinance, resolution, rule or regulation validly promulgated thereunder (§ 4).

D. Summary of provisions

Chapter 232, the Air Pollution Control District Act, gives cities, towns, counties or specially-created "air pollution control districts" considerable power in preventing or controlling air pollution.

In controlling air pollution a city, town or county may take unilateral action or may join with any other city, town or county to form a district for the control of air pollution. The district when formed is deemed a political corporate body. It is given the usual powers of a municipal corporation and, if authorized by popular vote, may levy district taxes against real and personal property in the district.

The city, town, county or district, for the purpose of controlling and preventing air pollution, may consult with other bodies and political subdivisions, conduct studies and research relating to air pollution, and receive moneys from any source for the study, dissemination of educational information and control and prevention of air pollution. The political body may pass ordinances, resolutions or rules and regulations pertaining to the control or prevention of air pollution. These enactments shall have the effect of a statute of the State within the district. A violation of such an enactment may be enjoined in a civil action brought by the prosecuting attorney of the county in which the violation occurred.

1/ Citations in this digest refer to Chapter 232, Laws 1957.

II. Administrative Organization

A. Conditions precedent to obtaining jurisdiction

1. Cities, towns and counties

After tests and surveys, in which the director of health may cooperate, to determine the purity of air within its jurisdiction and after a public hearing in accordance with RCW 42.23, held after 10 days' notice, the governing body of a city, town or county may by resolution declare the necessity of controlling air pollution and may then adopt and enforce ordinances or resolutions for such control within its jurisdiction (§ 5).

2. Districts

An air pollution control district may be formed by the joining together of any cities, towns or counties pursuant to ordinance or resolution adopted after hearing as provided above (§ 6).

3. Control officer

Any city, town, county or district which has adopted an ordinance for control and prevention of air pollution may appoint a "control officer" who is charged with enforcement of the act and the local air pollution control ordinances and regulations (§ 17).

B. Air Pollution Control Districts

1. Formation

(a) The ordinances and resolutions of cities, towns and counties forming a district are to specify the name of the district and participating political bodies; the district's principal place of business; the territory included within it; the period of time for which it is to operate; the effective date when the district is to begin to transact business and exercise its powers, and may specify the method of financing the air pollution control program.

(b) The district may begin to exercise its powers from the date of filing with the secretary of state a certified copy of the ordinance or resolution calling for the formation of the district, or from the date specified in such ordinance or resolution, whichever is later (§ 7).

2. Governing body

(a) Membership

(1) The governing body of each district is known as the board of directors and consists of an appointee of the city selection committee of each county and one county commissioner from each county to be designated by the board of county commissioners of each county included in a district (§ 10).

a. Each county included within the district is required to have a separate city selection committee, the membership of which consists of the mayor of each city and town within such county. A majority of the members of the committee constitute a quorum (§ 11).

b. The city selection committee of each county which is included within a district is required to meet within one month after the creation of such district to make its initial appointment to the board and thereafter whenever necessary to make succeeding appointments (§ 12).

(2) In a district formed of a combination of cities or towns only, the board consists of one appointee, of each town or city included in such district (§ 10).

(3) If the board would consist of an even number, the members agree upon and elect an additional member from the governing body of one of the towns, cities or counties comprising the district or a private citizen residing in the district (§ 10).

(4) Board members hold office at the pleasure of the appointing body (§ 10).

(b) A majority of the board constitutes a quorum for the transaction of business (§ 13).

(c) The board elects from its members a chairman and other necessary members (§ 13).

(d) Each member of the board receives from the district $25 per day (but not to exceed $1000 per year) for each full day spent in performance of his duties under this Act, plus the actual and necessary expenses incurred by him in such performance (§ 13).

3. Powers and Duties

(a) A district is a political corporate body and has all rights, powers and duties thereof (§ 8).

(b) Any city, town, county or district may, for the purposes of controlling and preventing air pollution

(1) Advise, consult, cooperate and contract with other agencies and educational institutions of the State, political subdivisions, industries, other states, the Federal Government, or other affected groups and individuals.

(2) Encourage and conduct studies, investigations and research relating to air pollution, its causes, control and prevention.

(3) Receive monies from any source and use and disburse such funds for the study, dissemination of educational information, and control and prevention of air pollution.

(4) Develop a comprehensive plan and program for the prevention and control of all new and existing sources of air pollution within its jurisdiction (§ 14).

(5) Through ordinances, resolutions, or rules and regulations adopted after consideration at a public hearing in accordance with RCW 42.32 of which there has been 10 days' notice, specify the particular properties, types, names, or rates of discharge, of solids, liquids or gases, or combinations thereof, and the locations, circumstances, conditions or times that their discharge into the air will cause air pollution or make it likely to [illegible]ir (§ 15).

(6) In determining what causes air pollution or will make it likely to occur, the governing body of each such city, town, county or district is required to take into consideration all of the facts and circumstances bearing upon the reasonableness of the activities involved and the regulations proposed to control it, including:

a. The character and degree of injury to, or interference with, comfort, safety, health, or the reasonable use and enjoyment of property which is caused or threatened to be caused.

b. The social and economic value of the activity involved.

c. The suitability or unsuitability of such activity to the area in which it is located; and

d. The practicability, both scientific and economic, of reducing or eliminating the discharge resulting from such activity (§ 15).

(c) The board

(1) Exercises all powers of the district except as otherwise provided (§ 13).

(2) May appoint an executive secretary, a control officer, and any other personnel, and is required to determine their salaries and pay them, together with any other proper indebtedness, from district funds (§ 13).

4. Financing

(a) At the time of making general tax levies in each year, the board of county commissioners levies taxes required for districts' purposes against the real and personal property in the district in accordance with the equalized valuation thereof for general tax purposes. Such levies are part of the general tax roll and are collected as part of the general taxes against the property in the district. The treasurers of the counties within the district pay into the appropriate district treasury all funds held by them to the credit of the district. The board designates the treasurer of a county within the district to have custody of the district treasury (§ 8).

(b) Upon an affirmative vote of 3/5 of those voting at a general or special election and provided not fewer than 40 per cent of the voters in a city, town, county or district who voted at the last preceding general state election participate, such city, town, county or district may levy a tax on all taxable property in accordance with development of a comprehensive plan and program for the prevention and control of all new and existing sources of air pollution within its jurisdiction in an amount and for a period as may be authorized (§ 9).

5. Dissolution

A district may be dissolved prior to the term provided in the agreement by the participating cities, towns, and counties upon adoption by the board, after a hearing held upon 10 days' notice, of a resolution to that effect and the approval of the governing body of each city or town and the Board of County Commissioners of each county comprising the district (§ 26).

III. Procedures

A. A control officer or his duly authorized representative has the power to enter at reasonable times upon any private or public property, except private dwellings housing four families or fewer, to investigate conditions relating to air pollution. The results of such investigation are confidential and may not be disclosed without the written consent of the parties (§ 20).

B. A person believed by a control officer to be violating any provision of the Act or any valid ordinance, resolution, rule or regulation relating to the control or prevention of air pollution, must be notified by the officer by registered mail (§ 21).

C. Within 15 days from the receipt of such notice, the person is to file with the control officer a full report stating what steps have been and are being taken to control or prevent the alleged air pollution (§ 21).

D. The control officer may then submit by registered mail to the person affected an order setting forth the particulars wherein such person is failing to comply with such ordinance, resolution, rule or regulation and sending an order by registered mail to such person to remedy such failure within a stated time (§ 21).

E. Upon petition filed within 15 days from receipt of such order a hearing must be granted by the governing body of the city, town, county or board to any person aggrieved by the order. Following the hearing the governing body or board enters its order affirming, reversing, or modifying the order of the control officer. If not appealed from the order is final (§ 22).

F. Appeal may be taken by filing a petition in the superior court of the county in which the violation allegedly occurred within 15 days after the order of the governing body or board. Such order is subject to review and trial de novo as a cause in equity (§ 22).

G. Unless, after notice and hearing, the superior court determines an emergency exists requiring that the order be in effect during the pendency of the appeal, the order is stayed until final determination of the appeal (§ 22).

IV. Violations and Penalties

Ordinances of cities or towns pertaining to control and prevention of air pollution are enforced in the same manner as other similar ordinances and regulations of a county and valid rules and regulations of a district pertaining thereto have within the jurisdiction of the county or district the force and effect of a State statute. A violation of either, not permitted by an existing variance order, may be enjoined in a civil action brought in the name of the State of Washington by the prosecuting attorney of the county in which the violation occured (§ 16).

V. Variances

A. Hearing

The governing body of a city, town or county, or the board of a district, on its own motion may, or upon petition of an interested person shall hold a hearing upon 10 days' notice to the petitioner and the control officer to determine to what extent, if any, and under what conditions a variance from the requirements established by statute or by any ordinance, resolution, rules and regulations, or order of a city or town, county or district is necessary and will be permitted (§ 18).

B. Granting of variance

1. If the governing body or board finds that because of conditions beyond control, compliance with requirements established by statute or with the resolutions, rules, and regulations or orders of the governing body or board would result in an arbitrary and unreasonable taking of property, or in the practical closing or elimination of any lawful business, occupation, or activity, in either case without sufficient corresponding benefit or advantage to the public in the control or prevention of air pollution, it is to prescribe other and different requirements applicable to plants and equipment operated by named classes of industries or persons or separate persons (§ 18).

2. In determining under what conditions and to what extent a variance is necessary and will be permitted, the body or court hearing the petition is to exercise a wide discretion in weighing the equities involved and the advantages and disadvantages to the residents of the area and to any lawful business, occupation or activity involved resulting from requiring compliance with the specified requirements or resulting from granting a variance (§ 19).

C. Revocation of variance order

In the event of a change in conditions, resulting in a substantial change in the equities involved and in the advantages and disadvantages existing at the time of granting a variance, the governing body may revoke or modify the order permitting the variance by written order after a public hearing held upon 30 days' notice to the persons or classes affected (§ 19).

VI. Air Pollution Control Advisory Council

The governing body of any city, town or county appointing a control officer, or the board of any district, is required to appoint an air pollution control advisory council to advise and consult with such body or board, and the control officer in effectuating the purposes of the law (§ 24).

VII. Scope and Construction

A. The regulations adopted by a district under this chapter supersede all rules and regulations of the component parts of a district relating to control and enforcement of air pollution but they are not to be construed to supersede any local county or city ordinance or resolution or any provision of the statutory or common law pertaining to nuisance, or to affect any aspect of an employer-employee relationship (§ 23).

B. This act does not apply to fires set or authorized by a public officer or county agricultural agent for certain purposes in pursuance of their official duties (§ 25).

VIII. Separability

Provision is made for separability (§ 27).

IX. The provisions of this Act became effective at midnight June 13, 1957.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

West Virginia

Under section 494 of the West Virginia Code, providing in part that a city council has plenary power and authority by ordinance or resolution to prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome, it has been held that the production and emission of smoke from a plant of a lawful business cannot be abated by a city under its mere charter powers to abate nuisances and to prevent injury and annoyance, in the absence of a reasonable ordinance, applicable alike to all of a class making such production and emission unlawful.

Section 591 (75) provides:

"The (home rule) city may provide for the elimination of hazards to public health and safety and may define and abate public nuisances."

Section 1287 provides:

"The State board of health, the State director of health or any county or municipal health officer shall inquire into and investigate all nuisances affecting the public health within its or his jurisdiction; and the said board or any such officer or the county court of any county or any municipality is authorized and empowered to apply to the circuit court of the county in which any such nuisance exists, or to the judge thereof in vacation; for an injunction forthwith to restrain, prevent or abate such nuisance."

It has been held hereunder that a circuit court is warranted, under its authority in equity, in restraining the adding of combustible substances to a burning pile of refuse, which pile has come into existence as an incident to the operation of a mine for the production of bituminous coal, the fact appearing from the record that sulphur dioxide emanating from the burning refuse is detrimental to public health.

1/ Citations in this digest refer to West Virginia Code of 1955, Annotated, 1957 Cumulative Supplement.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Wisconsin

Wisconsin has enacted legislation to regulate air pollution in counties having a population of 500,000 or more. In such counties the county board of supervisors is given the power: 2/

1. To regulate by ordinance within the territorial limits of such county the discharge into the open air of smoke, from solids, liquids, gases, fumes, acids, burning embers, sparks, cinders, soot, particulate wastes or dusts, including their radioactive fractions or counterparts, from any chimney, smokestock, vent, fuel-burning equipment, open fire apparatus, device, mechanism, substance, material or premises.

2. Prescribe the maximum volatile matter content or other constituents of fuels used within the county in hand-fired or other fuel-burning equipment.

3. Prescribe fees for the examination of plans, inspections, tests, issuance of permits, and certificates of operation.

4. Prescribe rules and standards in aid of such regulations.

5. Provide in such ordinance for an appeal board and an advisory board and prescribe the powers of each.

6. Prescribe penalties for violating such ordinance.

7. Provide for commencing actions to enjoin acts and threats of acts done in violation of such ordinance.

8. Provide for a county department of air pollution regulation with necessary officers and assistants to perform any and all functions relating to enforcing such ordinance.

An ordinance enacted by the board of supervisors pursuant to the foregoing supersedes and nullifies any municipal ordinance then in effect and the municipality has no power to enact an ordinance covering the subject matter included in the county ordinance while the latter is in effect.

1/ Citations in this digest refer to the Wisconsin Statutes, Title VIII, Chapter 59.

2/ Sec. 59.07 (53) as amended by Chapter 340, Laws of 1957 (Senate Bill No. 357).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Wisconsin

Supplement No. 1

Tax Benefits for Air Pollution Abatement Equipment

Real and personal property purchased, constructed and installed upon recommendation or order of a city council, a village board or county board pursuant to sec. 59.07 (53) to control air pollution shall be exempt from local taxation for five years, unless the use of the property creates net income before personal and real property tax for any of these five years [§ 70.11 (21)].

In addition, in lieu of depreciation, the owner may elect an accelerated amortization deduction for such property computed on an estimated life of 60 months [§§ 71.04(2b), 71.05(2b)].

Procedures for claiming and establishing these benefits are set forth in the statute.

1/ Citation in this digest refers to Wisconsin Statutes - Title X, Chapter 70 (Taxation), 1955.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Wyoming

Cities of the first class have the power to define, declare abate and remove nuisances and impose penalties on offenders (Section 29-318). The town councils of incorporated towns have the power to declare, prevent, abate and remove nuisances and take such additional measures for the public health as they deem necessary (Section 29-430 subdivision sixth).

1/ Citations in this digest refer to Wyoming Compiled Statutes 1945 Annotated and 1957 Supplement.